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Report of the Working Group of Experts on People of African Descent on its twenty-first and twenty-second sessions

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group of Experts on People of African Descent on its twenty-first and twenty-second sessions, prepared pursuant to Council resolutions 9/14, 18/28, 27/25 and 36/23. During its twenty-first session, held in Geneva from 20 to 24 November 2017, the Working Group held private discussions. At its twenty-second session, held in Geneva from 19 to 23 March 2018, the Working Group focused on the theme "Framework for a declaration on the promotion and full respect of human rights of people of African descent".

The Working Group concluded that the draft declaration should recognize the cultural, economic, political, and scientific contributions of people of African descent. It should also highlight the interconnectedness of past to present, mainly of the legacy of the transatlantic trade in enslaved Africans and colonialism with the persistence of racism, racial discrimination, Afrophobia, xenophobia, marginalization and related forms of intolerance against people of African descent today. In addition, multiple and intersecting forms of discrimination faced by people of African descent should be acknowledged and combated through the framework of the 2030 Agenda for Sustainable Development. All relevant stakeholders should make an effort to implement the Durban Declaration and Programme of Action and the programme of activities of the International Decade for People of African Descent.

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Report of the Working Group of Experts on People of African Descent on its twenty-first and twenty-second sessions*

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* The annex to the present report is circulated as received, in the language of submission only.

I. Introduction

1. The Working Group of Experts on People of African Descent held its twenty-first session from 20 to 24 November 2017 and its twenty-second session from 19 to 23 March 2018 at the United Nations Office at Geneva. The present report is submitted in accordance with Human Rights Council resolutions 9/14, 18/28, 27/25 and 36/23, in which the Council requested the Working Group to submit an annual report on all activities relating to its mandate. The report focuses mainly on the deliberations at the twenty-second session of the Working Group.

2. Representatives of Member States, the Holy See, international organizations, regional organizations and non-governmental organizations (NGOs) and invited panellists participated in the twenty-second session (see annex).

II. Organization of the twenty-second session

A. Opening of the session

3. In her opening statement, the Director of Thematic Engagement, Special Procedures and the Right to Development Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR), expressed appreciation for the work undertaken by the Working Group. She outlined the importance of the thematic discussions of the session on violent manifestations of racism and racial discrimination, the administration of justice, land rights and reparations in addressing some of the most pervasive human rights concerns of people of African descent. She noted that despite the existence of the robust anti-racism architecture of the United Nations, the mechanisms in place were only fully effective when Member States honoured their commitment to international human rights treaties, the Durban Declaration and Plan of Action and the programme of activities of the International Decade for People of African Descent, along with sustained civil society engagement and participation in those mechanisms.

4. The Director also encouraged the Working Group to continue to reach out to financial and development institutions through the development of its operational guidelines based on the Sustainable Development Goals in which the theme "leave no one behind" had a special meaning for people of African descent. She also took note of the initiatives of the Decade to draft a declaration on the promotion and full respect of human rights of people of African descent and emphasized the need for strong political will and civil society engagement to accomplish the task. She reaffirmed the commitment of the United Nations High Commissioner for Human Rights, as the Coordinator of the International Decade, to advancing the rights of people of African descent.

B. Election of the Chair-Rapporteur

5. Michal Balcerzak was elected Chair-Rapporteur of the Working Group.

6. Sabelo Gumedze, the outgoing Chair-Rapporteur, welcomed Marie-Evelyne Petrus-Barry as a new member of the Working Group and thanked the other members for their contributions. Mr. Gumedze also acknowledged both the success of the Working Group in having their recommendations adopted by States on the issue of racial discrimination faced by people of African descent and the need to continue efforts to have more States adopt its recommendations.

7. Accepting his new role as Chair-Rapporteur, Mr. Balcerzak thanked the other experts for his election and the participants for their support.

8. The representatives of Brazil, Canada, Haiti, Peru, Togo (on behalf of the Group of African States) and Venezuela (Bolivarian Republic of) expressed their appreciation to Mr.

Gumedze for his work during his tenure as Chair-Rapporteur and congratulated Mr. Balcerzak on his election.

C. Organization of work

9. The Working Group adopted the agenda (A/HRC/WG.14/22/1) and programme of work.

III. Update and briefings on activities undertaken by the Working Group in the past year

10. Mr. Balcerzak informed participants that the Working Group had submitted its annual report on its nineteenth and twentieth sessions to the Human Rights Council at its thirty-sixth session, including reports on its country visits to Canada and Germany (A/HRC/36/60 and Add.1 and 2), and had engaged in a constructive dialogue with Member States. The Working Group also submitted its annual report to the General Assembly at its seventy-second session (A/72/319) and participated in an interactive dialogue with the Third Committee on 31 October 2017.

11. At its twenty-first session, the Working Group had held a closed meeting at which members reviewed the methods of work of the Working Group, prepared for its upcoming session, communications and country visits, and held meetings with various stakeholders and representatives of OHCHR. The Working Group had decided to liaise more intensively with financial and developmental institutions. It had also met with the Committee on the Elimination of Racial Discrimination to explore ways to increase collaboration between the two mechanisms on issues of mutual concern.

12. The Working Group had conducted country visits to Guyana (2–6 October 2017) and Spain (19–26 February 2018). At the end of each visit, the Working Group had released press statements.[1] Reports of the visits would be submitted to the Human Rights Council at its thirty-ninth session. The Working Group thanked the Governments of Guyana and Spain for their invitation and for their assistance before, during and after the visits. The Working Group also thanked the representatives of NGOs and people of African descent with whom it had met.

13. The Working Group had continued to actively promote and participate in activities to interact with civil society and assist stakeholders in the implementation of the programme of activities for the International Decade for People of African Descent. It had participated in the regional meeting for Europe, Central Asia and North America held in Geneva on 23 and 24 November 2017. It had also established a standing agenda item for discussion in its public session on the International Decade as a commitment to raising further understanding and awareness of the need to implement the International Decade.

14. Ahmed Reid and Mr. Gumedze had participated (through a video message) in the launch of the Centre for Reparations Research at the University of the West Indies in Jamaica from 10 to 12 October 2017. From 8 to 11 March 2018, Mr. Reid had participated in the summit for the International Decade for People of African Descent in Georgetown on the theme "Where we are, where we ought to be, and how do we get there?" On 25 September 2017, Mr. Gumedze had delivered a keynote address on behalf of the Working Group at a side event during the thirty-sixth session of the Human Rights Council on racism, discrimination, Afrophobia and xenophobia in the United States of America, as a follow-up to the mission undertaken by the Working Group in 2016. On 10 October 2017, Mr. Gumedze had attended the fifteenth session of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action in Geneva. Ricardo Sunga III had written a paper exploring the human rights experience of people of African descent in Asia, which had been published by the University of the

[1] See https://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22212&LangID=E and https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22705&LangID=E.

Philippines. In a presentation to the Committee on the Elimination of Racial Discrimination on November 29, 2017, Ms. Petrus-Barry had noted that during all the fact-finding country visits undertaken by the Working Group, racial profiling had been identified as a major hindrance for people of African descent in the enjoyment of their human rights. In February 2018, Ms. Petrus-Barry had contributed to activities during the Month of Africa and People of African Descent in Guadeloupe, at which she had given a presentation on the programme of activities of the International Decade for People of African Descent to local NGOs that were looking for ways to implement the International Decade. She had also given a series of interviews regarding the International Decade in various media outlets. Mr. Balcerzak had given a presentation on the rise of populism and far-right movements in Europe at a seminar at the University of Liège in February 2018, an event that was co-organized by OHCHR.

15. During the reporting period, the Governments of Belgium, Norway and Uruguay had extended invitations to the Working Group to visit in 2019 and the Governments of Switzerland and the United Kingdom of Great Britain and Northern Ireland had invited the Working Group to visit in 2020. The Working Group expressed its appreciation to all the Governments that have cooperated with the mandate and invited it to undertake country visits. The Working Group had requested invitations to visit other countries and emphasized the importance of confirming dates and allowing visits to be planned and to proceed on schedule.

16. During the reporting period, and in accordance with its mandate, the Working Group had sent eight communications regarding allegations of human rights violations to Brazil, Guyana, Libya, Indonesia, Israel, Italy, Spain, the United Kingdom and the United States. The communications sent and replies received had been included in the joint communications reports of special procedures mandate holders submitted to the Council (A/HRC/39/27, A/HRC/38/54 and A/HRC/37/80). The Working Group urged States to address human rights violations faced by people of African descent seriously and to take effective measures to end impunity and structural racism.

17. The Working Group also issued several media statements during the reporting period. On 16 August 2017, it warned that racism and xenophobia were on the rise across the United States in the wake of the far-right demonstrations and violence in Charlottesville, Virginia. On 6 October 2017, it joined several special procedures mandate holders in a statement calling for urgent action to end the disproportionate impact of the death penalty on people from poorer communities. On 30 November 2017, the Working Group joined other special procedures mandate holders and issued an urgent call for action to ensure a future based on equality, justice and solidarity, marking the thirty-first anniversary of the Declaration on the Right to Development. That same day, it also joined in a statement urging the Government of Libya to take urgent action to end the country's trade in enslaved Africans, after shocking images showing an auction of Africans were captured on video and televised across the globe. On 1 March 2018, the Working Group joined several special procedures mandate holders in a statement urging an immediate halt of plans to deport Eritrean and Sudanese nationals from Israel. On the International Day for the Elimination of Racial Discrimination on 21 March, the Working Group, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Committee on the Elimination of Racial Discrimination issued a joint statement urging States to act against resurgent hate and structural discrimination. On 26 March 2018, the Working Group joined a statement expressing alarm over the killing of prominent Afro-Brazilian human rights defender Marielle Franco, who had decried the use of force by the military in Rio de Janeiro, Brazil. On 27 April 2018, the Working Group issued a statement expressing serious concerns over the deaths of people of African descent and of ethnic minorities in custody, which reinforced concerns about "structural racism" in the United Kingdom.

18. Following the internal session of the Working Group in November 2017 and the Regional Meeting on the International Decade for People of African Descent on 25 and 26 November, the Working Group had also organized a meeting on addressing racial stereotypes of people of African descent, with the participation of members of the Committee on the Elimination of Racial Discrimination and several civil society activists.

The discussion had focused on issues of perception, representation, historical stereotyping and portrayal in the media; racial bias and stereotypes in the justice sector; stereotypes in the education, housing, employment and health sectors; and gender and other forms of stereotypes faced by people of African descent, and the participants had deliberated on good practices to combat such stereotypes. The Working Group was planning to develop a thematic report based on the discussions at the meeting and its ongoing research.

19. The Working Group had continued its work on advancing engagement with financial and development institutions. It had commenced preparation of a draft set of operational guidelines on the Sustainable Development Goals in relation to people of African descent. It aimed to field-test the guidelines by engaging with national authorities and partners to promote the human rights of people of African descent in national programming processes. During the reporting period, Working Group members Mr. Reid and Mr. Balcerzak had taken part in a panel on international human rights mechanisms and the role of national human rights institutions in supporting the implementation of the 2030 Agenda for Sustainable Development, which was held during the high-level political forum on the Sustainable Development Goals in New York on 13 July 2017. The Working Group had also held a meeting on 3 November 2017 with the United Nations Development Group in New York on the operational guidelines and received valuable feedback.

20. The Chair opened the floor for Member States. The representative of Brazil reported that in the previous year it had, together with several other Member States, presented a resolution on the elaboration of a draft declaration on the promotion and full respect of human rights of people of African descent. The speaker reaffirmed the support of Brazil for such a declaration, stressed the importance of addressing multiple and intersecting forms of discrimination and urged all Member States and relevant stakeholders to start negotiations on the draft declaration as a concrete outcome of the International Decade for People of African Descent. The representative also recommended the creation of an international forum of people of African descent. The representative of Togo, on behalf of the African Group, expressed eagerness to follow up the processes recommended in the Durban Declaration and Programme of Action to raise awareness of the ongoing consequences of the enslavement and colonialism suffered by people of African descent. The representative of Peru noted that Peru was one of the co-authors, along with Brazil, of the above-mentioned resolution. The representative of Canada stated that on 30 January 2018 its Prime Minister had announced official recognition of the International Decade. The representatives of Haiti and the Bolivarian Republic of Venezuela expressed satisfaction at participating in the session of the Working Group.

IV. Summary of deliberations

Thematic analysis

21. The Working Group devoted its twenty-second session to the theme "Framework for a declaration on the promotion and full respect of human rights of people of African descent".

22. The first panel discussion focused on violent manifestations of racism, racial discrimination, Afrophobia, xenophobia and related intolerance through extremist ideologies, hate speech and incitement to hatred. The topic was discussed pursuant to Human Rights Council resolution 36/23 on the mandate of the Working Group, in which the Council requested "the Working Group to pay special attention in its annual report to the rising tide of racism and racial hatred, as evidenced by the resurgence of white supremacist ideologies, and extremist nationalist and populist ideologies, and to make specific recommendations in this regard."

23. Mr. Sunga delivered a presentation entitled "Reflections on right-wing extremism". He shared the experience of the Working Group during their country visits, during which they had observed the effects of right-wing extremism on the lives of people of African descent. He attributed the lack of understanding and fear of the person of African descent to recent migration trends, the perceived stress on national economies and social welfare

systems, and the global fight against terrorism. He also asserted that each person was able to make a unique and meaningful contribution to society and all persons, including migrants, whatever the nature of their contribution, had infinite value simply by being. Mr. Sunga reiterated the significant role of the State in promoting positive perceptions of migrants to the public, including the presentation of facts and studies that included the contribution of migrants to society. On the matter of the prevention of violent extremism, Mr. Sunga recommended that States develop joint and participatory strategies with civil society and local communities to protect communities from recruitment for violent extremism. In addition, he suggested that States use confidence-building measures at the community level by providing appropriate platforms for dialogue and the early identification of grievances. He stated that the Durban Declaration and Programme of Action and the programme of activities of the International Decade for People of African Descent were useful instruments that would provide guidance in this connection.

24. Joe Frans, a former member of the Swedish parliament and a former Chair of the Working Group, highlighted in his presentation an increase in racism, which was perpetrated through hate speech and manifested by violence towards people of African descent around the world, particularly in Europe and North America. He explained the three levels at which racism functions: institutional racism, mediated racism and internalized racism. He pointed out the importance of understanding how exactly racism permeates the very social fabric of societies to develop mechanisms to redress the issue. For instance, America's "Black lives matter" movement had arisen out of the deaths of black people, but it was not a new development. The root cause was slavery and colonialism. Another example from Denmark showed how policymaking affected racism. According to Mr. Frans, the Government of Denmark had recently decided to empower the police to adopt a regime where the same type of crime would attract different sanctions depending on in which part of the city an individual lived. Even though the motive of the policy was to combat crime, it risked criminalizing a certain group of people because of where they resided, whereby people of African descent were negatively affected because they lived in the affected areas, when the main issue was poverty. He added that such policies led to gains for far-right parties and emboldened them to raise the tone of their anti-migrant, anti-black rhetoric. He called for continued efforts by the whole human rights community, including the Working Group, to rectify structural and institutional discriminatory policies.

25. During the interactive discussion, Mr. Gumedze asked the panellists how States could address the issue of extremist ideologies and violence against people of African descent if they lacked data disaggregated on the basis of race or ethnicity. Mr. Sunga agreed that it was indeed difficult to address the issue without proper data. While the best option would be to strongly urge States to count people on their territory on the basis of voluntary self-identification, Mr. Frans suggested the development of application software in order to keep track of racist crimes and unfair treatment faced by people of African descent. Mr. Gumedze also wanted to know how to deal with violent extremism in sports and during election periods when hate speech was commonly employed in order to win votes. Mr. Frans suggested that the Working Group could engage further with sporting federations. He called upon civil society to take an active role in pushing back on the increasing tolerance for hate speech during elections. Mr. Balcerzak commented that the climate of tolerance for hate speech was the root of the problem and that there should therefore be laws in place to punish and criminalize hate crimes. Mr. Reid commented that one way forward in addressing institutional and violent racism was for States to implement the Durban Declaration and Programme of Action and the programme of activities of the International Decade for People of African Descent, with an emphasis on teaching African history and highlighting the contribution made by people of African descent.

26. One representative of an NGO pointed to the importance of seeking the source of racism rooted in the notion of white supremacy. Another representative of a civil society organization voiced deep concern at the rise of incidents targeting racial, ethnic and religious minorities and the proliferation of violent hate groups and called upon the Working Group to encourage Member States, in the strongest possible terms, to hold violent hate groups and individuals accountable, to honour non-refoulement obligations and ensure that national immigration policies and law enforcement policies did not discriminate based on race, national origin or other status. Mr. Balcerzak stated that the Working Group

regularly reacted and responded to such concerns through its communications procedure. Another civil society representative stated that racial profiling had the potential and propensity to give rise to police brutality and other rights violations. The tendency of police forces to disproportionately stop and search people of African descent could also lead to detention experiences that might amount to torture. Mr. Frans expanded upon this, suggesting that racial profiling was a form of racial violence. Mr. Gumedze noted that during the fact-finding country missions undertaken by the Working Group, encounters with police and administrative bodies had revealed a distinct lack of representation of people of African descent, which resulted in people of African descent being unwilling to report violations of their human rights. He noted that the Working Group would continue to encourage representation in such bodies to further address the challenges of racial profiling.

27. The second panel focused on the theme "Administration of justice: police violence, prisons and accountability". Mr. Gumedze gave a presentation on the topic and commented that the reason for the continued rise in violence against people of African descent lay in the lack of willpower of those who were involved in the administration of justice to apply international human rights principles. Mr. Gumedze recalled the conclusions drawn by the Working Group from its fact-finding visits to several countries on police violence, where a pattern of impunity for police violence, including the killing of unarmed people of African descent, had been involved. He also expressed concern at the overrepresentation of people of African descent in penitentiary systems and prolonged pretrial detention. Racial profiling of people of African descent and the impunity of the officers involved were common and he concluded that States must hold accountable those who violated the rights of people of African descent and ensure that they accounted for their actions or omissions in the administration of criminal justice, as provided for in the Durban Declaration and Programme of Action and directed by the International Decade for People of African Descent.

28. Evita Chevry, an attorney from Guadeloupe, gave a presentation on the administration of justice in Guadeloupe. The fact that most law enforcement officers were white, coupled with the language barrier, were leading causes for the prevalence of racial discrimination. Ms. Chevry stated that police violence existed in Guadeloupe; however, until the media reported such incidents, it was very rare that cases of police violence were heard in the courts. She added that the lack of data on ethnicity should not be an excuse to look further into the unequal treatment of people of African descent since the majority of people in Guadeloupe were of African descent. Ms. Chevry also pointed to overcrowding in prisons and an insufficient number of medical doctors and inadequate facilities in prisons. She expressed concern about lower than national average rates of education among those imprisoned. Ms. Chevry concluded by emphasizing the importance of French human rights obligations.

29. Mr. Frans emphasized in his presentation that racial discrimination in the administration of justice was a global problem, which subverted the rule of law, undermined faith in the legal system and resulted in the victimization of racial and ethnic groups by the very institutions responsible for their protection. He showed how volatile situations could become when racial injustice was combined with the administration of criminal law, providing examples of riots in Los Angeles and Florida. Mr. Frans further commented that despite the significant population of people of African descent in Europe, structural racism, marginalization and the exclusion of people of African descent was not on the European political agenda. He elaborated on how race disproportionately affected people of African descent with regard to the death penalty, harsher sentences, the lower likelihood of making bail and the higher rates of "stop and search" by the police. He concluded his presentation by urging the Working Group to engage with the International Criminal Police Organization (INTERPOL) and the International Council of Police Representative Associations to combat racism towards people of African descent in the administration of justice.

30. During the interactive dialogue, Mr. Reid shared his observation from the fact-finding visits of the Working Group that there was a growing trend for women of African descent to end up in the criminal justice system, with detrimental effects on their children as well as themselves. Ms. Chevry mentioned that there had been big demonstrations in

Guadeloupe requesting the Government to come up with protection policies for women, including education on gender relations. Mr. Balcerzak inquired about the issue of access to legal representation for victims of racism and racial discrimination, suggesting that it would require coordination with groups such as lawyers' associations. Mr. Frans responded that there was an issue with the quality of legal aid, even though most European countries had a framework for legal aid. He called upon civil society to take up cases involving discrimination against people of African descent to build praxis in various jurisdictions upon which to rely. He encouraged the Working Group to increase cooperation with the International Bar Association and the International Association of Judges.

31. Lack of interpretation or cultural understanding of non-verbal communication for migrants of African descent who find themselves subjected to the criminal justice system, compounded by a lack of representation, was also raised as an important issue by several members of the Working Group and the panellists. Ms. Chevry emphasized the seriousness of the issue in Guadeloupe, where people of African descent might feel pressured to use the French language, leading to misinterpretation arising from subtle differences between the French and Creole languages. Ms. Petrus-Barry commented on the lack of representation of people of African descent in the judiciary in France. In Guadeloupe, civil society actors had protested and requested the Government to have quotas on media personnel, in order to have equal representation of all races, but to no avail. She also noted that people of African descent were often relegated to non-public sectors and were working in low-paid and menial jobs rather than in higher posts in the public sector. The representative of Brazil pointed to the use of and support for positive measures as an imperative for bringing about equality and representation for people of African descent, and described their application in Brazil. The speaker also called for the principle of positive measures to be incorporated in the draft declaration on the promotion and full respect of human rights of people of African descent.

32. One representative of an NGO commented on the lack of action to counter bias-based policing. Another civil society representative supported the recommendation of the Working Group that comprehensive legislation prohibiting racial profiling be adopted and racial profiling and treatment of minorities by law enforcement be monitored. Civil society representatives also raised the issue of prison conditions affecting people of African descent, given their disproportionate incarceration rates. A civil society representative called upon all Member States to implement the International Decade for People of African Descent, noting that while discussions focused on global initiatives, there were country-specific duties, which States needed to fulfil.

33. The third panel focused on the theme "Land rights for people of African descent". In his presentation, Mr. Reid emphasized the reason that land rights should form the cornerstone of the draft declaration on the promotion and full respect of human rights of people of African descent. Mr. Reid stated that the long-term effects of a policy to exclude people of African descent from owning land were observable today. He provided examples of the British enslavers even receiving compensation money until recently, whereas the enslaved persons and their descendants were left landless in the Caribbean. Mr. Reid explained that the situation was similar in North America after emancipation. He also provided examples from Latin American countries, where the expansion of mining and petroleum activities were resulting in the expropriation of land and creating conflicts among indigenous peoples, people of African descent and others. Mr. Reid concluded his presentation with the recommendation that Member States actively consider, where possible, instituting legislation on an ancestral rights bill for people of African descent. He also recommended that Member States guarantee recognition, titling and demarcation of land belonging to people of African descent, which was aimed at resolving all outstanding land claim issues within historically black communities. Finally, he recommended that Member States remove the bureaucratic obstacles that prevented people of African descent from rightfully claiming their land.

34. The second presenter, Kimani Nehusi, Associate Professor of Africology and African American Studies at Temple University in the United States, highlighted ignorance as the main factor perpetuating structural violence against people of African descent. He provided some historical accounts of the long relationship that Africans have had with land

since the beginning of civilization. He further highlighted the spiritual, religious, administrative and cultural connection that people of African descent had with land. Mr. Nehusi pointed out that the consequence of colonization was not just that they were dispossessed of land but also that there was no compensation for their labour for people of African descent. He requested the Working Group to support people of African descent in recovering their ancestral lands. He also recommended that Africans be involved at all levels of society to search for solutions on land issues. Lastly, he recommended the training and teaching of African culture and history and the return of lands obtained by colonization.

35. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance gave a presentation by video statement. She pointed out that denial of land rights was one of the most persistent and structurally rooted forms of racial oppression confronting people of African descent and Africans in Africa. The Special Rapporteur stated that in the diaspora, communities of African descent were facing a risk of forced, violent and often deadly displacement because Governments, multinational corporations and even multilateral financial institutions often used the discourse of development to legitimize the dispossession of those communities of their land. Even in urban settings, people of African descent confronted documented, egregious racial discrimination related to security of tenure, including in their access to housing. She suggested that in order to resolve the issue, there must be an acknowledgement by the former colonial powers of their shared moral responsibility for finding workable solutions that respected human rights to the failure of decolonization processes, providing pathways to substantive racial equality in landownership. She also emphasized that women of African descent must be included in the discussion as they are especially vulnerable to intersectional discrimination and subordination because of the ways that race and gender interact to heighten their exclusion from land rights. The Special Rapporteur concluded by assuring the Working Group of her close cooperation on the proposed declaration, including specifically on the question of land rights.

36. During the interactive discussion, Mr. Sunga noted the recommendation of giving land to people of African descent as a way of compensating for enslavement. He asked how such land rights could be formulated alongside the rights of indigenous peoples. In response, Mr. Nehusi said that in the Americas, the labour of people of African descent on the land meant that they belonged to the land and vice versa. He commented that while land might not be claimed in compensation while dispossessing its rightful owners, those lands where people of African descent had lived could be provided to them. Ms. Petrus-Barry noted the important connection between land and the remembrance of ancestors for people of African descent. Mr. Nehusi noted that colonialism had fractured African people through the erasure of African cultures and traditions, as well as importing the colonizers' own schisms — for example, there were British-dominated parts of the Caribbean and French parts of the Caribbean. He called for disconnected groups to restore unity and freely exchange information among themselves. Ms. Petrus-Barry echoed this suggestion, acknowledging that language was often a formidable barrier to finding common cultural grounds. She also raised the issue of human rights defenders who are at risk of criminalization as they pursue African land rights in addition to other rights. One representative of civil society raised concerns over racial discrimination against Afro-Colombians and their right to free, prior and informed consultation in relation to land in Colombia. Similarly, another civil society representative shared information about discriminatory housing practices in the United States.

37. The fourth panel focused on the theme "Reparations for people of African descent". Ms. Petrus-Barry gave an introductory presentation on the topic. She defined reparations in the context of the deportation and enslavement of Africans and the Durban Declaration and Programme of Action. Ms. Petrus-Barry also emphasized the need to make reparations to people of African descent for such crimes and pointed out that only after confronting past and current theories related to the presumed inferiority of people of African descent, would the general public pay attention to violent acts of racism, question their own mentality and accept legislative changes at the national level that could reverse the discrimination and violent extremism that face people of African descent. Ms. Petrus-Barry then examined international human rights tools for reparations, including the Caribbean Community (CARICOM) 10-point plan for reparatory justice, which had been endorsed by the Working

Group as a basis for reparatory justice for people of African descent. On the issue of a binding international legal reparation system, she suggested that the proposed declaration could also be useful in that regard. In addition, she noted that the International Decade for People of African Descent could offer a real opportunity to build a strong international link and networks among people of African descent to support the process of reparations.

38. In her presentation, Ms. Chevry affirmed the urgent need for reparations for the crime against humanity that transpired during enslavement and the transatlantic trade in enslaved Africans. She reiterated the need for reparations, including individual claims for financial reparations and the setting up of expert bodies to evaluate the magnitude of those violations. She added that other forms of reparations could be the returning of land taken by settlers and in the possession of their heirs. Ms. Chevry also stated it was unacceptable to apply non-retroactivity on crimes against humanity and any more delay should be met with increased reparations. Mr. Nehusi highlighted the need for reparations as an end to centuries of destruction, subjugation and continuing exploitation of the African people and their resources. He stated that positive discrimination was vital, despite some believing that it was wrong that African people should receive assistance from States that had traditionally repressed them. He added that financial reparation was important, but it was difficult to quantify the intergenerational psychological pain inherited by people of African descent. He concluded by saying there were intergenerational physical manifestations of trauma suffered as a result of enslavement, such as an increased risk of diabetes and coronary disease.

39. In the ensuing interactive dialogue, Mr. Reid suggested placing reparations within the framework of the right to development. He also outlined the various forms of deprivation inflicted upon people of African descent and how that could determine the type of reparations to be sought. He stated that in addition to health issues, illiteracy was also a consequence of enslavement, and given the massive detriment to development such illiteracy rates had, reparations in the context of the right to development would oblige European countries to undertake a broader range of responsibilities to facilitate sustainable development. The issue of double taxation was also raised with regard to reparations. If State taxes were used to pay for reparations and people of African descent were paying taxes, victims were ultimately paying for their own reparations, which defeated the purpose. Mr. Nehusi therefore suggested tax relief for people of African descent, whether full or partial exclusion from taxes, which could create a sort of "structured settlement" over time, reducing the burden on successive generations of people of African descent. In that connection, Pastor Murillo Martinez, a member of the Committee on the Elimination of Racial Discrimination, also referred to the CARICOM 10-point plan for reparatory justice, specifically article 10 that calls for debt cancellation for the Caribbean countries. Representatives of civil society suggested the possibility of the Working Group preparing a report on reparations that would include articulation of their importance to the equality of human dignity and rights for people of African descent and recommendations that would include the establishment of a tribunal dedicated to the issue of reparatory justice. Another civil society representative pointed to conclusions at the Durban Review Conference, where the nations of the world reached a consensus that enslavement was a crime against humanity, that victims of those atrocities were entitled to reparations and that there was no statute of limitations, underscoring the legal foundation for the basis of reparations. The basic principles of remedies for victims of gross and serious violations under humanitarian law, enacted in General Assembly resolution 60/147 including (a) restitution; (b) rehabilitation; (c) compensation; (d) safeguarding and protection from future violations, were also raised. Reparations in the form of return of history, including opening the archives of museums to document the histories of people of African descent and having museums return African artefacts to people of African descent and/or African institutions were also raised.

40. The fifth and sixth panels were devoted to discussion on the theme of "Elaboration of a draft declaration on the promotion and full respect of human rights of people of African descent, including feedback on the questionnaire", pursuant to Human Rights Council resolution 35/30 and General Assembly resolution 69/16. As part of the preparatory work, the Working Group sent a note verbale to all Member States and a call for submissions to civil society, requesting submissions on the scope of the declaration. The

Working Group asked for input on the key human rights and specific guarantees that the draft declaration must include. It received 5 submissions from Member States and 20 from civil society. Ms. Petrus-Barry presented a compilation of all the submissions, including inputs from the Working Group. Before starting her presentation, she encouraged Member States and civil society to make further submissions and comments before 1 October 2018.

41. Ms. Petrus-Barry presented suggestions for a preamble of the draft declaration, referring to the language used in the Durban Declaration and Programme of Action. That included calling upon States to recognize the existence of their populations of people of African descent and the cultural, economic, political and scientific contributions made by these populations. Other inputs would focus on the relationship between the legacy of the transatlantic trade in enslaved Africans and colonialism and the persistence of racism, racial discrimination, Afrophobia, xenophobia and related forms of intolerance against people of African descent today, adding multiple and intersecting forms of discrimination, such as age, gender, sexual orientation, religion and economic situation.

42. Submitting entities also called for the draft declaration to encourage Member States that have not yet ratified the International Convention on the Elimination of All Forms of Racial Discrimination and other international agreements related to combating racism and discrimination to do so. Also emphasized in the submissions was the suggestion that the draft declaration should include a mandate for States to make a genuine commitment to collecting disaggregated data according to the motto of the Sustainable Development Goals — "leave no one behind". The availability of, and access to, data and statistics disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and others are important for monitoring the implementation of the Sustainable Development Goals. The draft declaration should also assert a right to reparations and reparatory justice for the descendants of enslaved Africans, within the legal framework of the Durban Declaration and Programme of Action and of the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6). The view that fundamental rights, such as the right to life, liberty, and security of the person, should be included in the draft declaration was also included in submissions. Furthermore, equality before the law should be guaranteed for people of African descent in the draft declaration, including the right to presumption of innocence, the right to an independent and impartial tribunal, including equal treatment before that tribunal, the right to the assistance of counsel, the right to a fair trial and the right to ensure full and effective access to the justice system.

43. The draft declaration should focus on the right of people of African descent to security of person and protection by the State against violence or bodily harm. Violence or bodily harm includes ethnic or racial profiling, disappearances, extrajudicial executions, torture and unequal treatment on the economic, social and political levels, whether inflicted by government officials or by any individual group or institution, including law enforcement and the judiciary. The Working Group has also recommended the setting up of national observatories on racial profiling to identify and document violations of rights for people of African descent and for them to report instances and receive reparations for those violations. It was suggested that this section of the draft declaration should also include a reference to the responsibility of States regarding the training, control and accountability of law enforcement personnel, with the goal of ending the systematic and institutionalized targeting and killing of people of African descent, particularly youth. It was also suggested that articles advocating for abolition of the death penalty in States where it still exists should also be included.

44. The draft declaration should include robust legal protections against discrimination and violent crimes, especially those motivated by hate based on race. All States should be required to counter offline and online hate speech and incitement to hatred from extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological groups. In addition, a comprehensive approach based on a solid legal framework, complemented by other key measures, including education and awareness-raising programmes and the training of law enforcement officials and members of the judiciary on Afrocentric issues and victim-centred approaches, should be further developed. States should also ensure that the abuse, exploitation, trafficking and torture of, and all forms of violence against, children of African descent are adequately prevented or

prosecuted, while also ensuring that women and girls of African descent are not subject to forced marriage and female genital mutilation. Similarly, Ms. Petrus-Barry stated that submissions also called for the inclusion of the rights of migrants, refugees and asylum seekers in the draft declaration, as well as positive measures to reduce the inequalities that marginalize communities of African descent.

45. The draft declaration should re-assert the human right to health and well-being, and highlight new global risks, such as climate change, environmental degradation and pollution, and urban migration. It should also call upon States to take appropriate steps to ensure that people of African descent are fully and effectively included in the schemes of universal health coverage and the public health system. In the same connection, the draft declaration should call upon States to adopt specific programmes with the aim of further decreasing the incidence of the diseases referred to in target 3.3 of the Sustainable Development Goals among people of African descent. In terms of substance abuse, the declaration should aim at prevention and treatment of the abuse and providing ways for the reintegration of substance abusers with other members of society. Reproductive health provisions should include reducing global maternal mortality and the preventable deaths of newborns and children under 5 years of age within the population of African descent. States should also support a multinational team of healers to develop pan-African black psychology treatments and healing protocols to address the psychiatric damage stemming from the dehumanizing assault of the colonization and enslavement of peoples of African descent.

46. Submitting entities also called upon States to document the number of people of African descent living in areas that were likely to be affected by climate change and to develop national preventive measures, including putting in place disaster management programmes aimed at protecting people. States were called upon to develop educational programmes aimed at raising the awareness of people of African descent of climate change mitigation, adaptation, impact reduction and early warning. In the draft declaration States should be encouraged to take all necessary steps to eradicate hunger and poverty, while ensuring an increase in the agricultural productivity and incomes of small-scale producers of African descent.

47. According to the submissions, the draft declaration should encourage Member States to develop legislation and land reforms to ensure adequate housing and the land rights of people of African descent, especially pursuant to Committee on the Elimination of Racial Discrimination, general recommendation No. 34 (2011) on racial discrimination against people of African descent. Similarly, employment should also be available to people of African descent without discrimination, as required by the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The draft declaration should include provisions regarding improvements in anti-discrimination legislation and its enforcement in employment, by focusing on and addressing multiple forms of discrimination, such as discrimination based on race, colour, gender and disability. In their submissions, entities also emphasized the right of people of African descent to be able to establish and manage their educational systems and institutions, providing education in their own languages in a manner appropriate to their cultural methods of teaching and learning. The rights and freedoms and corresponding State obligations outlined in the draft declaration should also include cultural rights, such as the right to engage in and teach African religions and spiritual practices. In that connection, States should also be encouraged to promote and fund academic and research endeavours related to African history. Ms. Petrus-Barry also shared submissions pertaining to the need to establish positive measures. The draft declaration should include similar provisions for people of African descent who experience multiple and intersecting forms of discrimination based on sexual identity, gender expression, religion or belief (art. 14 of the Durban Declaration and Programme of Action), national or ethnic origin and all other forms of protected identities. The declaration should advocate for the repeal of discriminatory laws on any of those protected grounds.

48. During the interactive dialogue, the representative of the United States shared its best practices on promoting tolerance, non-discrimination and inclusivity, as well as protecting and promoting the human rights of people of African descent, including freedom

of expression, association and peaceful assembly. Mr. Murillo Martinez highlighted the close link between global risks, such as extreme weather events, large involuntary mass migrations, severe natural disasters and large-scale terrorist attacks, and the impact of those risks to people of African descent in the context of the 2030 Agenda for Sustainable Development. He also focused on the need for comprehensive data on people of African descent, including the identification of victims and documentation of the consequences of the past and its impact on victims today, as elements to be included in the draft declaration. One civil society representative reiterated the importance of positive measures and reparatory justice for people of African descent. Another civil society representative raised the issue of racism and racial discrimination in cyberspace, including surveillance and wiretapping activities aimed at social movements.

49. Mr. Balcerzak reminded participants of the one-day meeting to be held during the next session of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action, at which participants would consider the elaboration of the draft declaration, and therefore requested all Member States and civil society to continue to send their inputs. Mr. Reid suggested developing a concise document incorporating all the feedback received. Mr. Murillo Martinez suggested focusing on the aims, scopes, concepts and principles of the draft declaration beforehand, in order to make the meeting fruitful. He emphasized that the declaration needed to consider the human rights concerns of three groups of people of African descent: (a) victims of the transatlantic trade in enslaved Africans; (b) Africans who have migrated and are second-generation descendants of victims of the transatlantic trade in enslaved Africans; (c) Migrant populations, which have recently crossed the Mediterranean. African countries and their role in the declaration should also be considered. Mr. Martinez also emphasized that the declaration needed to address the issue of racial profiling. He added that another area that needed to be covered through the declaration was self-identification. Ms. Petrus-Barry agreed, adding that the key issue for people of African descent was their invisibility, given the lack of data on their human rights situation.

V. Conclusions and recommendations

50. The Working Group thanks Member States and representatives of international organizations and civil society for their active participation.

A. Conclusions

51. **Equality and non-discrimination are foundational principles of human rights. Any act of racial discrimination, Afrophobia, xenophobia and related intolerance runs contrary to those principles. The Working Group concludes that the heightened security measures adopted by States have increased the risk of violations of the rights of people of African descent, while the spectre of terrorism has fanned the flames of right-wing extremism.**

52. **Criminalization of irregular entry and other discriminatory State actions, including immigration legislation and practices, perpetuate negative perceptions of migrants and people of African descent, while bolstering support for right-wing extremism. Violent manifestations of xenophobia, Afrophobia and hate speech against non-nationals, particularly migrants, refugees and asylum seekers, contribute to structural racism. The Working Group is also concerned by increasing levels of racism in sport.**

53. **The Working Group is concerned that some States do not collect disaggregated data that reflects the magnitude of racism, racial discrimination, hate speech and hate crimes perpetrated against people of African descent. States that do not collect and analyse disaggregated data lack the information necessary to address racism and intolerance effectively, including measures to counter extremist ideologies and hate speech.**

54. Institutional and structural racism and racial discrimination are the legacies of enslavement, colonialism, neocolonialism and centuries of dehumanization. People of African descent are disproportionately discriminated against in the administration of justice. Racial profiling gives rise to police brutality and other violations, particularly against people of African descent. Trends ranging from stop and search to the killing of people of African descent by law enforcement agents are of grave concern to the Working Group.

55. The overrepresentation of people of African descent in prisons is a major concern for the Working Group. People of African descent are less likely to be granted bail than others, thereby spending more time in jail before they are even convicted of a crime. They are more likely to receive harsher sentences for the same crimes than others. Once incarcerated, people of African descent are more likely to be segregated and subjected to violence at the hands of prison staff, and are more likely to die while in custody. People of African descent are also underrepresented in employment in the justice system.

56. The Working Group is concerned by the growing trend of criminalization and sexual exploitation of women of African descent. That also leads to infringement of the rights of children, some of whom are born and remain in prisons or detention centres for prolonged periods of time.

57. In the criminal justice system, language barriers can be compounded by social or cultural pressure to speak a language that migrants, refugees and asylum seekers of African descent do not understand. Some may not be aware of the right to use their language or have access to interpretation where it is available. Such barriers can lead to miscommunication and grave injustices.

58. For people of African descent, land is a strategic resource. Among other things, it is a source of livelihood and economic activity for them and informs their identity, culture, spirituality and self-worth. Historically, people of African descent have been subjected to violent dispossession of their lands and continue to struggle to maintain collective control of them. In urban settings, people of African descent confront documented, egregious racial discrimination related to security of tenure, including in their access to housing.

59. Women are especially vulnerable to multiple and intersecting forms of discrimination, which heightens their exclusion from land rights. Patriarchal cultural practices, in combination with legal frameworks, exclude women from realizing their land rights. That is despite the pivotal role that women play in productive land use and supporting families and communities, often doing so in the absence of compensation for and recognition of their fundamental roles.

60. A growing number of people of African descent aspire to return to their ancestral lands in Africa. Those who return to Africa require support to facilitate access to landownership.

61. People of African descent have a right to reparations, which should be proportional to the gravity of the violations and the harm suffered. The consequences of the trade in enslaved Africans, enslavement, colonialism, neocolonialism and discrimination go beyond mere financial inequalities. They include injustices, such as intergenerational health issues, disproportionately high illiteracy rates and the erasure of collective culture, history and identity. Reparations include the right to restitution, rehabilitation, compensation, and safeguarding and protection from future violations.

62. The Working Group is concerned by the risk of people of African descent making contributions to State funds, including through taxation, that could be used to pay reparations to descendants of enslaved Africans.

63. The principle aspect of the draft declaration should be made clear: that people of African descent are particularly vulnerable to structural discrimination and various forms of inequity with respect to the enjoyment of human rights. Equality and non-discrimination are foundational principles of human rights.

64. The draft declaration provides an opportunity to consider the impact of historical injustices and structural racism on people of African descent and to remedy their consequences. It is also an opportunity to elaborate rights that are not yet enshrined in the international legal framework and that are specific to the experience of people of African descent.

65. The draft declaration will establish or reaffirm standards related to the individual and collective rights of people of African descent, including the right to reparations; recognition as ethnic communities and groups; the right to communal ownership of their ancestral lands; the preservation of traditional knowledge; and the right to an equitable share of resources.

66. The success of the draft declaration relies upon the participation of all Member States, regional and international organizations, United Nations funds and programmes, specialized agencies, civil society organizations and all other relevant stakeholders.

B. Recommendations

67. States should engage with communities, especially those with long histories of mistrust of authorities, including people of African descent, to prevent and counteract any instances of racial violence, hate speech and incitement to hatred. States should develop zero-tolerance policies towards white supremacy and other extremist nationalist and populist ideologies, hate speech and incitement to hatred. Specific legal measures should be implemented to ensure that perpetrators are prosecuted and brought to justice. Such measures might include provisions introducing aggravated criminal responsibility for such acts, but they should also address the area of prevention. Social campaigns and educational measures are strongly advised. People of African descent engaged in the exercise of their rights to freedom of expression and peaceful assembly should not be targeted or criminalized.

68. States should develop joint and participatory strategies, including with civil society and local communities, to prevent the emergence of violent extremism, protect communities from recruitment and the threat of violent extremism, and support confidence-building measures at the community level by providing appropriate platforms for dialogue and the early identification of grievances. The Working Group recommends the development of technological tools, such as applications, for capturing data on racial discrimination and profiling. States should increase collaboration with sport federations and fan clubs to combat racism in sports.

69. States should conduct censuses and collect disaggregated data in a way that will accurately reflect the human rights situation of people of African descent and the multiple and intersecting forms of discrimination and violence that they face. States should utilize that disaggregated data to develop policies on the prevention and monitoring of white supremacy and other extremist nationalist and populist ideologies, hate speech and incidents of incitement to hatred.

70. States should criminalize acts of racial profiling, collect and publish statistics about police stop and search practices and abuse, and monitor trends regarding racial profiling and treatment of people of African descent by law enforcement agents. They should also end impunity for any member of law enforcement who engages in racial profiling and ensure that victims can gain access to the justice system. States that have not yet done so should establish independent oversight bodies for police agencies, with the authority to conduct investigations of all complaints of human rights violations. States should strengthen human rights training and awareness-raising activities designed for immigration officials, border police, the staff of detention centres and prisons, local authorities and civil servants in charge of enforcing laws. National security forces should receive training on the proper treatment of migrants and asylum seekers.

71. **Member States should, as a matter of priority and urgency, address the overrepresentation of people of African descent in prisons and take positive measures at all levels of the justice system to end the mass incarceration of people of African descent. States are encouraged to explore alternatives to prosecution and incarceration, including alternative dispute resolution processes and restorative justice initiatives. States must engage in bail reform to ensure that people of African descent are not more likely than others to be detained prior to their trial. States should ensure training for sentencing judges and judges should be reminded of the principle of proportionality in sentencing. States should take positive measures to ensure the representation of people of African descent in the justice system, including in law enforcement and among lawyers and the judiciary.**

72. **The Working Group recommends that States end the disproportionate criminalization of women of African descent and the violation of their rights. The best interests of children should be paramount.**

73. **States should ensure that people of African descent are afforded the necessary language interpretation services throughout the justice system.**

74. **Land rights should form the cornerstone of the promotion of and full respect for the human rights of people of African descent. Land rights for people of African descent must therefore be legally recognized. The enactment of ancestral rights laws should be taken into consideration. Member States should guarantee the recognition, titling and demarcation of land belonging to people of African descent, with the aim of resolving outstanding land claim issues within communities of African descent. Member States should remove the bureaucratic obstacles that prevent people of African descent from rightfully claiming their land, including by ensuring affordable access to legal representation.**

75. **The Working Group recommends that States consider women of African descent as a primary focus in guaranteeing land rights. Women must play a central role in the formulation and implementation of protective policies and strategies related to land rights, at the national, local and community levels.**

76. **States should work with civil society groups to create programmes aimed at facilitating resettlement, including aiding access to land rights for people of African descent who are resettling in Africa.**

77. **The Working Group reiterates the content of paragraph 101 of the Durban Declaration and Programme of Action, that with a view to closing those dark chapters in history and as a means of reconciliation and healing, the international community and its members are invited to honour the memory of the victims of past tragedies, including the transatlantic trade in enslaved Africans. The Working Group further notes that some have taken the initiative of regretting or expressing remorse or presenting apologies and calls on members that actively participated in the transatlantic trade in enslaved Africans to pay reparations to their descendants, who continue to suffer the consequences of the slave trade and colonialism, and to contribute to restoring the dignity of the victims.**

78. **The right to reparations for genocide and crimes against humanity, such as the transatlantic trade in enslaved Africans, colonialism and neocolonialism is not subject to any statute of limitations. States responsible for historical injustices must ensure that reparations are made for those injustices to people of African descent. In addition to financial compensation, those States should consider special measures, including quotas in education and employment in governmental and private sectors. States must provide reparations in a manner that fully respects and implements the right to development of people of African descent. A tribunal dedicated to the issue of reparatory justice should be established. The Working Group recommends the CARICOM 10-point action plan for reparatory justice as a guiding framework.**

79. **States should consider, where relevant, implementing a tax-relief scheme that avoids double taxation for people of African descent, while simultaneously easing the burden on successive generations of people of African descent.**

80. **The draft declaration should call upon States to recognize the existence of their populations of people of African descent and the cultural, economic, political and scientific contributions they have made. It must stress the relationship between the legacy of the transatlantic trade in enslaved Africans and colonialism and the persistence of racism, racial discrimination, xenophobia and related forms of intolerance against people of African descent today. The draft declaration should also address the marginalization, poverty and exclusion faced by people of African descent, and their vulnerable condition owing to multiple and intersecting forms of discrimination. The draft declaration should underline the importance of eradicating all forms of discrimination faced by people of African descent, including through the framework of the 2030 Agenda for Sustainable Development.**

81. **The draft declaration should emphasize that people of African descent, as a collective and as individuals, have the right to the full enjoyment of all human rights and fundamental freedoms as recognized in international human rights law. It should require all States to ratify the relevant treaties and ensure that national legislation is compatible with international human rights law.**

82. **The draft declaration should include guarantees for civil and political rights, and economic, social and cultural rights. It should also include reparations; protection of land rights; protection from State violence, including racial profiling; protection against hate crimes; protection for human rights defenders; and protection for migrants, refugees and asylum seekers of African descent. States should also be called upon to establish positive measures to ensure the participation of people of African descent at all levels of society and in all areas of employment, including guaranteeing a high level of political participation.**

83. **The Working Group recommends that all Member States, regional and international organizations, United Nations funds and programmes, specialized agencies, civil society organizations and all other relevant stakeholders implement the Durban Declaration and Programme of Action and the programme of activities of the International Decade for People of African Descent. The Working Group reiterates its call and urges Member States to reach consensus as soon as possible, so that the forum for people of African descent can be held at the earliest opportunity.**

Annex

List of participants at the twenty-second session

A. Members of the Working Group

Mr. Michal Balcerzak

Mr. Sabelo Gumedze

Ms. Marie-Evelyne Petrus-Barry

Mr. Ahmed Reid

Mr. Ricardo A. Sunga III

B. Member States

Argentina, Bolivia (Plurinational State of), Brazil, Canada, Colombia, Dominican Republic, Ecuador, Guyana, Haiti, Jamaica, Japan, Mexico, Morocco, Peru, South Africa, Togo, United States of America, Venezuela (Bolivarian Republic of)

C. Non-member States

Holy See

D. Intergovernmental organizations

European Union, International Labour Organization (ILO)

E. Non-governmental organizations not in consultative status with the Economic and Social Council

Advocates for Human Rights USA, Instituto Internationale Maria Ausiliatrice (IIMA), France Ô

F. Panellists and presenters

Evita Chevry, Attorney, Guadeloupe

Joe Frans, former member of the Swedish parliament and former Chair of the Working Group of Experts on People of African Descent

Kimani Nehusi, Professor of Africology and African American Studies at Temple University, United States

E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Pastor Murillo Martinez, member of the Committee on the Elimination of Racial Discrimination

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Report of the Working Group of Experts on People of African Descent on its mission to Guyana

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group of Experts on People of African Descent on its mission to Guyana from 2 to 6 October 2017. In the report, the Working Group presents the current legal, institutional and policy framework and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in Guyana, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to Guyana*

I. Introduction

1. The Working Group of Experts on People of African Descent undertook a visit to Guyana, at the invitation of the Government, from 2 to 6 October 2017. The members of the delegation were Sabelo Gumedze (Chair), Michal Balcerzak and Ahmed Reid.

2. During the visit, the Working Group assessed the situation of human rights of people of African descent living in Guyana, and gathered information on any forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance that they face. The Working Group studied the official measures taken and the mechanisms intended to prevent structural discrimination and to protect victims of racism, as well as responses to multiple forms of discrimination in accordance with the concept of intersectionality.

3. As part of its fact-finding mission, the Working Group visited Georgetown, Linden and Buxton. It met with the Prime Minister, the Minister for Foreign Affairs, the Attorney General and Minister for Legal Affairs, and Members of Parliament, including representatives of the opposition. The Working Group also met with senior officials from the ministries of the Presidency, Education, Communities, Public Infrastructure, Public Security, Public Health, Social Protection, and Indigenous Peoples' Affairs, and also from the Department of Social Cohesion and the Guyana Bureau of Statistics. Similarly, the Working Group met with the Ombudsman and members of his staff, representatives of national human rights institutions, including the Indigenous Peoples' Commission and the Women and Gender Equality Commission, and civil society. In Linden, the Working Group met with the Mayor and city councillors, and also with the Chairperson of the Regional Democratic Council. It also met with the Director of Prisons and visited the Lusignan Prison. The Working Group also met with representatives of civil society and the community of persons of African descent in Buxton.

4. The Working Group thanks the Government of Guyana and in particular the Ministry of Foreign Affairs for organizing the visit. It also thanks the United Nations country team in Guyana and the Resident Coordinator, civil society organizations, human rights defenders, lawyers, academics and individuals that it met during the visit, who are working to promote and protect the rights of Afro-Guyanese, creating initiatives and proposing strategies to address structural racism, racial discrimination, xenophobia, Afrophobia and related intolerance.

II. Background: historical overview

5. Guyana is located on the north-eastern coast of South America. It is bound on the north by the Atlantic Ocean, to the south by Brazil, to the east by Suriname and to the west by the Bolivarian Republic of Venezuela. Guyana covers a territory of approximately 215,000 km^2, the majority of which is dense tropical forest. Knowledge of the history of colonization and enslavement in Guyana is essential to understand the contemporary situation of human rights of people of African descent in the country. Guyana was first colonized by the Dutch who, through the establishment of the Dutch West India Company in 1621, turned to the importation of enslaved Africans to sustain the burgeoning sugar, cotton, coffee and tobacco industries. From 1815 until its independence in 1966, the territories of present-day Guyana were under British colonial rule.

6. Although the abolition of the trade in enslaved Africans was proclaimed by the Government of Great Britain in 1807, enslavement continued. Sugar planters in Guyana and the Caribbean and their political and financial backers in Great Britain were not yet

* Circulated in the language of submission only.

ready for the final abolition of enslavement. The Emancipation Act of 1833 abolished enslavement only after British planters argued that the freeing of enslaved people by British legislation was a violation of their property rights, and that they therefore demanded compensation. They subsequently received £20 million sterling (approx. £17 billion in modern currency) from the Government as compensation for the loss of their "property". The act also stipulated that enslaved persons would continue to work on the plantations as "apprentices" for a further period of six years, a deliberate way to ensure that plantation owners were provided with free labour (at an estimated cost of £27 million). The trade in enslaved Africans, which began in 1640, had introduced a sizeable African population in excess of 80,000 by the time enslavement was finally abolished in 1838 (A/HRC/10/11/Add.2, para. 10). Owing to a perceived shortage of labour, an estimated 239,000 Indian indentured labourers were brought to Guyana between 1838 and 1917.

7. The legacy of colonialism and the trade in enslaved Africans has determined the demographic constitution of the country's population, and its overall social, economic, political structures as well. Six ethnic groups make up the population. Five of these distinct groups are a direct result of immigration policies based on the country's colonial past. The population, therefore, comprises groups of persons with nationality backgrounds from Europe (whites and Portuguese), Africa, China and India, with the Amerindians as the indigenous population. Guyana is the only English-speaking country on the mainland of South America. These groups of diverse nationality backgrounds have been fused together by English, the common language.[1]

8. According to the national census conducted in 2012, the total population was 746,955, which was marginally down by 4,268 when compared to the number found during the 2002 census. The primary cause of this decrease was a net outflow of residents. East Indians are the largest ethnic group, and currently account for 39.8 per cent (297,493), down from 43.4 per cent in 2002. They are followed by persons of African origin (29.2 per cent), down from 30.2 per cent. The third in rank are those of mixed heritage (19.9 per cent), up from 16.7 per cent in 2002. This group has grown significantly over the past three decades. A similar trend is noticeable for the Amerindian group, which currently accounts for 10.5 per cent of the population. The smallest groups are the whites (0.06 per cent), Chinese (0.18 per cent) and Portuguese (0.26 per cent). Approximately 90 per cent of the population lives in the coastal parts of the country, while the remaining 10 per cent lives in the hinterlands.[2]

III. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

9. Guyana has ratified all the major international human rights treaties, with the exception of the International Convention for the Protection of All Persons from Enforced Disappearance.

10. Guyana has not developed a specific national action plan to combat racism, racial discrimination, xenophobia or other forms of intolerance. The protection of human rights and the prohibition of racial discrimination is enshrined in the Constitution. Article 149, paragraph 1 of the Constitution of Guyana states that "no law shall make any provision that is discriminatory either of itself or in its effect", and that "no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority." Article 149, paragraph 2 defines "discriminatory" as "affording different treatment to different persons attributable wholly or mainly to their or their parents' or guardians' respective descriptions

[1] See Bureau of Statistics Guyana, 2012 population and housing census, available at www.statistics guyana.gov.gy/census.html.

[2] Ibid.

by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture".

11. Article 154 (A) (1) of the Constitution also provides that "every person [...] is entitled to the human rights enshrined in [the] international treaties [to which Guyana has acceded], and such rights shall be respected and upheld by the executive, legislature, judiciary and all organs and agencies of the Government and where applicable to them, by all natural and legal persons".

12. The Racial Hostility (Amendment) Act of 2002 made it a criminal offence to excite hostility or ill will against persons because of their race, and prohibits incitement to racial hatred, including by spoken, written or published word. Persons convicted of the offence forfeit their eligibility to stand for public office for five years, commencing from the date of conviction. The act provides for greater penalties for offences and evidential issues.

13. The Prevention of Discrimination Act of 1997 aims to eliminate discrimination in employment, training, recruitment and membership or professional bodies, and promotes equal remuneration for men and women performing work of equal value. It prohibits discrimination on the grounds of race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status or age, and places restrictions on the employment of minors. The law allows for the introduction of affirmative action or temporary special measures to promote equality of opportunity in employment.

14. Under the Constitution and the Ombudsman Act, the Ombudsman is empowered to investigate any action taken by any department of Government, by the President, ministers, officers or members of such a department or authority, taken in exercise of the administrative functions of that department or authority.

B. Institutional and policy measures

15. The revised Constitution of 2003 provides for the appointment of the national institutions governing ethnic relations, women and gender equality, the rights of the child, indigenous peoples, and human rights. The Working Group welcomes the appointment of members to the Ethnic Relations Commission in January 2018. It notes with regret, however, that none has been appointed to the Human Rights Commission. The Working Group was informed that the delay was due primarily to the lack of political consensus on the appointments.

16. The Working Group welcomes the efforts made by the Government for its "Five Bs" initiative aimed at providing boats, buses, bicycles, breakfast and books to school children for easier access to school, and other basic school needs for students across the country. It also notes the Green State Development Strategy, which takes into account, among other issues, human rights, multi-ethnicity, gender equality, non-discrimination and the protection of vulnerable and marginalized population groups as principles for social cohesion and inclusion. It is also aligned with the 2030 Agenda for Sustainable Development.

17. The Working Group noted the significant lack of disaggregated data required to inform policies. The national population and housing census conducted in 2012 resulted in a considerable amount of data that, regrettably, have been neither disaggregated nor analysed. Although data on ethnicity are available, they should be used to monitor the situation of people of African descent, to assess the progress made, to increase their visibility and to identify social gaps in social and economic conditions. The data should also be used to assess and guide the formulation of policies and action to prevent, combat and eradicate racism, racial discrimination, xenophobia, Afrophobia and related intolerance. The Working Group recalls that, in paragraph 92 of the Durban Declaration, States are encouraged to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels, and to undertake all other related measures necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance.

18. The Police Complaints Authority, established by the Police Complaints Authority Act of 1989, became operational in January 1990. It allows members of the general public to report alleged disciplinary and criminal offences by members of the Guyana police force. It oversees the investigations into allegations and decides on whether reports should be recorded and investigated further (also in cases where a police officer who had received a report of a crime has failed or refused to record and investigate an offence).

19. The Working Group was informed that, even though the month of August is set aside for Emancipation Month, only few villages were able to celebrate the month owing to a lack of resources. It therefore welcomes the formation of the Guyana Reparations Committee and the Government's commitment to fund it, and the civil society led-initiative to coordinate the programmes, plans and events for the International Decade for People of African Descent in Guyana. The Working Group also welcomes the call made by the Government for the submission of funding proposals for activities relating to the International Decade. From 8 to 11 March 2018, Guyana hosted an international meeting on the International Decade, to which a member of the Working Group was invited to give a presentation. The meeting, which was organized by civil society entities with the support of the Government, witnessed the attendance of more than 100 scholars, human rights activists and individuals from the private sector in the fields of business, information and communications technology, health and education, among others. Discussions held at the meeting, which had the theme "Where we are, where we ought to be, and how we get there", focused on encouraging participants to cooperate across disciplines to share working models that have been effective in the development of people of African descent and their communities, within the framework of the International Decade. The Working Group welcomes the laudable effort made by the Government and civil society in Guyana, and urges other Member States to work closely with civil society to achieve the goals and objectives set out in the Programme of Action for the International Decade.

IV. Racial discrimination

A. Criminal justice system, representation, negative stereotypes and the media

20. The Working Group found that, even though the majority of the members of the Guyana police force is Afro-Guyanese, civil society entities continue to report a high incidence of racial profiling by the police force, which had a significant impact on persons of African descent. The Working Group was also informed about cases of alleged extrajudicial killing by the police over the past decades, and the failure to effectively investigate the cases and to secure justice. The Working Group calls for a thorough investigation of such abuses. It regrets that it was unable to meet with the Commissioner of Police, as had been planned. The Working Group met with the Police Complaints Authority, according to which between January and September 2016, complaints had increased by 33 per cent over those lodged during the same period in 2015. Most of the complaints lodged fell under the category of neglect of duty. Lack of resources and capacity were also cited as concerns.

21. The Working Group was informed that the majority of inmates and detainees were of Afro-Guyanese origin. It is seriously concerned at the overcrowding and substandard conditions witnessed in prison facilities. The Working Group also learned that the overcrowding could, to some extent, be attributed to the prevalence of lengthy pretrial detention. The situation was further exacerbated when inmates at Camp Street Prison, the largest prison in Guyana, allegedly set fire to the prison on 9 July 2017 in protest against the overcrowding of the facility, which was reportedly designed to accommodate no more than 600 inmates. At the time of the incident, the prison housed approximately 984 inmates, the majority of whom were of African descent. It was reported that the inmates were at the time being accommodated in an open field stadium.

22. The Working Group visited Lusignan Prison, where the majority of inmates are Afro-Guyanese. Inmates were kept in appalling conditions not fit for human habitation.

Overcrowding was a major concern. Members of the delegation visited one cellblock built to accommodate 30 inmates that held more than 80, all of whom had to share one shower and one toilet. The stench emanating from the landfill next to the cellblock combined with that from the stagnant water below and beside the cellblocks was unbearable. The unhygienic conditions of the prison and associated health risks are of serious concern. Although inmates with tuberculosis were held in a separate room within the prison facility, such a measure is insufficient to prevent the spread of the disease to other inmates. The wooden structure of the facility also poses a significant fire hazard. The Working Group found that the prison clearly fell short of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). No human being should be subjected to such dehumanizing conditions.

23. Following the conclusion of its visit, the Working Group was informed that a detainee at Lusignan Prison, who had been interviewed by members of the delegation, had suffered reprisals, in the form of verbal threats, following contact with the Working Group (see A/HRC/37/80 and Corr.1).

24. Civil society entities reported to the Working Group that the conditions in juvenile detention centres were similar to those in prisons and were not adequate to ensure the rehabilitation of juveniles. They also reported that there were no specific diversionary options for juveniles to ensure that detention was the last resort. Persons of African descent also reported that they were frequently stereotyped as being more likely to commit crimes.

B. Disparities in access to education, health, housing and employment

25. The Working Group noted serious deficiencies in the enjoyment of economic, social and cultural rights by people of African descent. It was informed about the considerable challenges that people faced, such as lack of job opportunities, inadequate access to quality health care and social security, environmental risks and issues affecting access to secondary and tertiary education. Rural areas are characterized to a considerable degree by underinvestment, while access to most resources and opportunities is significantly confined to Georgetown. Civil society entities reported that Afro-Guyanese villages were distinctly recognizable by their poor infrastructure and substandard housing and roads. The Working Group was also informed about the lack of a university in Linden, which meant that students wishing to obtain a higher education were forced to commute every day to Georgetown.

26. The Working Group noted that more needed to be done with regard to data collection, which should take into account economic and social indicators, including, where appropriate, health and health status, infant and maternal mortality, life expectancy, literacy, education, employment, housing, land ownership, mental and physical health care, water, sanitation, energy and communications services, poverty and average disposable income. The mass emigration of Guyanese is also a matter of concern.

27. The State is the largest landowner, while the second largest landowners are the Amerindian (indigenous) villages, which own communal land titles accounting for 14 per cent of national land mass (A/HRC/WG.6/21/GUY/1, para. 38). In March 2017, a commission of inquiry was set up by the President to examine and address uncertainties surrounding individual, joint and communal ownership of land across the country, and to make recommendations thereon. The Working Group notes the effort made by the said commission to resolve the issue of land ownership by Afro-Guyanese, among others. The commission is expected to examine in particular the tracts of land previously bought and owned by people of African descent after their emancipation. The Working Group is aware of the importance of land as historically the first basis for economic production. It noted that civil society organizations promoting the rights of people of African descent in the country have demanded compensation for the descendants of enslaved freed Africans for lands purchased by their ancestors.

28. The Working Group is especially concerned that school curricula do not accurately or adequately reflect the history of people of African descent in Guyana — including the

history of the transatlantic trade in enslaved Africans, enslavement and colonialism — and their achievements and contribution to its development.

29. The Working Group was informed that the once thriving bauxite mining industry in Linden, which had provided employment opportunities to many, had been affected by the fluctuating prices of and decrease in demand for bauxite on the world market, resulting in the downscaling of the workforce within that industry. Many miners who had been laid off after working for decades had received low severance pay and had no access to their pension. The Working Group was also informed about the lack of attention paid to issues arising from the poor health and safety concerns of mineworkers, who are predominantly of African descent.

C. Multiple forms of discrimination

30. Afro-Guyanese women often face inequalities and multiple forms of discrimination on the grounds of their race, colour, gender and religious belief.

31. The Working Group was informed that many women of African descent, who were often the sole breadwinners for their families, were afraid or reluctant to report certain crimes, such as domestic violence or sexual abuse, for fear of stigmatization within their communities, resulting in general underreporting of them. Although the participation of women in the labour force was rising, women were also increasingly doing low-paying jobs. The Working Group was also concerned at the high dropout rates of girls. Civil society entities also informed the Working Group that institutions such as the Women and Gender Equality Commission were less accessible to women in rural parts of the country.

32. Civil society entities also reported that, despite greater awareness about sexual and gender-based violence and improved counselling services and vigilance, and despite the review of the Sexual Offences Act, legal protection was still inadequate, as reflected in the very low conviction rates for sexual offences.

33. Civil society entities reported that discrimination against lesbian, gay, bisexual and transgender persons and sex workers was widely prevalent. Transgender Guyanese persons in particular were criminalized and stigmatized, and subjected to discrimination because they were more visible than other members of the lesbian, gay and bisexual community. One transgender person shared a personal story with the Working Group on how she had been subjected to discrimination when she tried to petition a court of law in Guyana. The magistrate refused to hear her matter and even asked that she leave the courtroom because she was "cross-dressed"; in fact, according to section 153 (1) (xlvii) of the Summary Jurisdiction (Offences) Act, cross-gender dressing is an offence. Sexual minorities are not protected under the clause in the Constitution on protection from discrimination. Lesbian, gay, bisexual and transgender persons often choose not to express their sexual orientation or identity out of fear of being threatened, subjected to discrimination or victimized.

34. Members of the Rastafari community reported to the Working Group that they had been increasingly marginalized in the exercise of their cultural and religious rights, leading to a life of poverty, disease and illiteracy; they were therefore more vulnerable to many of the social ills that affect the general population.

V. Conclusions and recommendations

A. Conclusions

35. **Guyana is a multi-ethnic, multiracial, multilingual and multi-religious country. The people of Guyana share a common history of enslavement, indentureship and colonialism, and have endeavoured to build social cohesion out of a fragmented past. The Working Group found nevertheless that ethnic divisions were generally reflected in political parties, as well as in the public and private sectors, and that ethnic polarization became more conspicuous in the run-up to elections.**

36. The Working Group notes with concern the delays in the appointment of members to the Human Rights Commission, leading to a protection gap, given that human rights obligations are not monitored and racism and racial discrimination are not prohibited.

37. The Working Group learned that the judicial system was undermined by the excessive length of proceedings, especially at the pretrial stage. Pretrial detention is also a matter of serious concern. In addition, the enjoyment of the right to legal representation is often limited to those who can afford to pay, giving rise to a serious concern about the right to a fair trial in the criminal justice system.

38. The overcrowding of prisons is also a serious concern. Overcrowding is caused by the limited capacity of prison facilities, lengthy pretrial detention and a general lack of resources.

39. The Working Group is also concerned at reports of cases of extrajudicial killing by the police over the past decades, and at the failure to effectively investigate and provide justice, including when persons of African descent were targeted.

40. The Working Group welcomes the positive outcome declaration made at the meeting on the International Decade for People of African Descent held in March 2018, which, inter alia, envisaged the establishment of an international network for the implementation of creative solutions to the issues that people of African descent faced, within the framework of the International Decade.

41. Racism, racial discrimination and related intolerance are manifested in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights. The Working Group recognizes the need to integrate a gender perspective into relevant policies, strategies and programmes of action to address multiple forms of discrimination.

B. Recommendations

42. The Working Group recommends that Guyana undertake impact-oriented activities in the framework of the International Decade for People of African Descent to bridge the existing gaps between policies and practice. This should include the implementation of relevant recommendations for recognition, justice and development of people of African descent in Guyana. The International Decade is an opportunity to showcase achievements in this regard.

43. The Working Group also recommends that the Guyana authorities seriously consider constitutional reform to strengthen the protection and promotion of human rights, to address racism and racial discrimination.

44. The Working Group further recommends that the Human Rights Commission be constituted without further delay. It urges the Government to provide such institutions with the financial, human and technical expertise necessary for them to act in full independence, and the powers to fulfil their responsibilities.

45. The Working Group encourages the authorities to strengthen the functions and the capacity of the Office of the Ombudsman by expanding its human, financial and technical capacities, to carry out investigations on its own accord.

46. The Working Group strongly recommends that the Government collect, compile, analyse, disseminate and publish reliable statistical data, and take all measures necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance.

47. The Working Group, recalling paragraph 99 of the Durban Declaration, in which States concerned are called upon "to honour the memory of the victims of past tragedies and affirm that, wherever and whenever these occurred, they must be

condemned and their recurrence prevented", recommends that the Government of Guyana take measures to preserve, protect and restore the memory of sites and places of the transatlantic trade in Africans and enslaved resistance, giving greater visibility to this history and culture through museums, monuments, visual arts and other means.

48. The Working Group recommends that resources be provided to people of African descent for the celebration of Emancipation Month.

49. In consultation with people of African descent, the relevant authorities should find ways to create memorials to honour people of African descent and African victims of historic tragedies; for example, monuments should be erected in Linden to commemorate the events of 1964 and 2012.

50. The Government should review and ensure that textbooks and other educational materials reflect historical facts accurately and adequately as they relate to past tragedies and atrocities, such as enslavement, trade in enslaved Africans and colonialism. School curricula should also serve to promote interracial harmony and respect for the traditions and cultures of the different ethnic groups living in Guyana.

51. The Government should ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol of the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and lift its reservations on article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

52. The Government should adopt a national plan of action against racial discrimination developed in consultation with and the involvement of civil society entities and associations representing people of African descent, with a focus on structural racial discrimination, legislative reforms, accountability and enforcement of anti-discrimination legislation, in accordance with the relevant provisions of the Durban Declaration and Programme of Action.

53. The Working Group strongly encourages the Government to make efforts to reform the State judicial system. Steps should be taken to ensure that the right to a fair trial without undue delay is guaranteed not only in theory but also in practice.

54. Racial profiling must be prohibited by law and a complaint mechanism should be put in place to address this problem.

55. All prisons should be administered in accordance with the State's international human rights obligations, including the United Nations Standard Minimum Rules for the Treatment of Prisoners. Overcrowding in prisons and detention centres must be addressed as a matter of urgency. Measures should be taken to improve infrastructure and conditions of hygiene, and to make available the material, human and budgetary resources necessary to ensure that conditions of detention are in conformity with minimum international standards. Prisons that are not fit for human habitation, such as Lusignan Prison, should be closed and replaced with facilities that meet international standards.

56. The Working Group reiterates its call upon the Government of Guyana to investigate all allegations of reprisals, to hold perpetrators accountable and to ensure that persons interacting with the Working Group during its visit are not subjected to any harm, threat, harassment or punishment.

57. Juvenile detention centres must adhere to international human rights standards and implement programmes for the rehabilitation of children. All facilities in which children and young adults are placed should be independently monitored and inspected to ensure that standards of treatment and care are maintained.

58. The Government should take the measures necessary to guarantee that prompt and impartial inquiries are conducted into all extrajudicial killings by the police,

including those targeting people of African descent, perpetrators are prosecuted and effective remedies are provided to victims and their families.

59. **The teaching of history should be compulsory at the primary and secondary educational levels, thereby giving children of African descent a connection with their past and a sense of cultural identity. This knowledge will also be beneficial to others, who will come to appreciate the contribution of the Afro-Guyanese to the culture and development of Guyana, and could help to address the negative stereotypes and stigma that Afro-Guyanese persons face.**

60. **The Working Group urges the Government to revise and develop specific curricula and corresponding teaching materials that respect and recognize history, including the transatlantic trade in Africans. Such curricula should be incorporated into formal and informal education at the early childhood, primary, secondary and tertiary levels.**

61. **The Working Group encourages the Government to consider establishing vocational schools across the country, and university-level education in Linden.**

62. **The Working Group also encourages the authorities to invest resources in sports activities and programmes for young people, including those of African descent.**

63. **The Government of Guyana should take all measures necessary to ensure the full implementation of the right to adequate standard of living, including the right to adequate housing.**

64. **Land allocation, including ancestral land, should be identified and demarcated.**

65. **Poverty, which largely affects people of African descent, should be addressed through the establishment of dedicated development funds to empower people of African descent who have been left behind.**

66. **The Working Group urges the Government to implement policies that accelerate the decentralization of power and access to resources. Special steps should be taken to increase accessibility of affordable loans for entrepreneurships by people of African descent.**

67. **Adequate policies should be implemented to prevent and effectively prosecute sexual harassment in the labour environment and beyond.**

68. **People of African descent should have access to health care whenever necessary. Full access to affordable medicines and vaccines is essential. Universal health coverage and public health schemes should be ensured without any discrimination.**

69. **The Working Group urges the Government to introduce urgently programmes aimed at reducing the suicide rate. In this regard, special attention should be paid to programmes providing medical and psychological care for those affected.**

70. **Mental health should be given adequate attention in the framework of the national health policy. Effective access to psychological care and advisory services must be ensured for persons of all ages, in particular for adolescents and young adults, those struggling with economic difficulties, and the elderly.**

71. **Programmes should be implemented to prevent and treat substance abuse. Efforts to prevent HIV/AIDS should also be strengthened.**

72. **Resources should be allocated to the Women and Gender Equality Commission to strengthen its accessibility.**

73. **The Government should initiate legal reforms aimed at addressing the cultural and religious rights of the Rastafari community.**

74. **In accordance with the Durban Declaration and Programme of Action, the Working Group urges political leaders and parties to actively combat racism, racial**

discrimination and related intolerance, and to promote solidarity, tolerance and respect.

75. **The Working Group reminds the media of their important role as a public watchdog with special responsibilities for ensuring that factual and reliable information about people of African descent is reported, while refraining from political hate speech and the polarization of society.**

76. **The Working Group urges the Government to seek partnerships with civil society organizations when framing important legislation pertaining to people of African descent, and to provide them with adequate funding.**

77. **The Working Group encourages the United Nations country team to support the implementation of the International Decade for People of African Descent and the implementation of the 2030 Agenda for Sustainable Development, with a focus on indicators relevant to people of African descent.**

78. **Guyana must continue to play an active role in seeking reparatory justice by means of the efforts currently being made in the Caribbean Community, including its 10-point plan of action on reparations.**

79. **The Working Group reiterates its thanks to the Government of Guyana for its willingness to engage in dialogue, cooperation and action to combat racial discrimination. It hopes that the present report will support the Government in this process, and expresses its willingness to assist further in this important endeavour.**

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Report of the Working Group of Experts on People of African Descent on its mission to Spain

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to Spain from 19 to 26 February 2018. In the report, the Working Group presents the current legal, institutional and policy framework and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in Spain, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to Spain*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. At the invitation of the Government of Spain, the Working Group of Experts on People of African Descent undertook a visit to Spain from 19 to 26 February 2018. The members of the delegation were Sabelo Gumedze (Chair), Marie-Evelyne Petrus-Barry and Ricardo A. Sunga III (members of the Working Group).

2. During the visit, the Working Group assessed the human rights situation of people of African descent living in Spain and gathered information on the forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance they face. The Working Group studied the official measures taken and mechanisms intended to prevent structural racial discrimination and protect victims of racism, as well as responses to multiple forms of discrimination according to the concept of intersectionality. The Working Group visited Madrid, Barcelona, Almería and Ceuta.

3. The Working Group met representatives of several central government ministries in Madrid, including the Ministries of Foreign Affairs and Cooperation; the Presidency; Justice; Health, Social Services and Equality; Employment and Social Security; Education Culture and Sport; the Spanish Agency for International Cooperation and Development and the National Institute of Statistics. The Working Group also met with the Vice-President and senior officials of the Supreme Court and with members of the parliament (the Congress of Deputies). It met with officials of the Office of the Spanish Ombudsman, the Prosecutor and the national coordinator against hate crimes and discrimination. It also met with officials of the various law enforcement agencies including the Guardia Civil, the Auditor of the Inspection of Personnel and Security Services, and the border enforcement agencies.

4. The Working Group met with local government authorities in Barcelona and the regional police force Mossos d'Esquadra. It also met with officials of the Ombudsman of Catalonia, the prosecutor of hate crimes in Barcelona and the Barcelona City Council Office of Non-discrimination. In Almería, the Working Group met with local authorities, including law enforcement authorities. It also visited the temporary migrant reception centre in Ceuta and the Aluche immigration detention centre in Madrid. In each of the cities that the Working Group visited, it also met a considerable number of Spanish citizens of African descent, as well as human rights activists, lawyers, academics and representatives of non-governmental organizations.

5. The Working Group thanks the Government of Spain for its invitation and the authorities in Madrid, Barcelona, Almería and Ceuta for their support and cooperation during the visit. In particular, the Working Group thanks the Ministry of Foreign Affairs and Cooperation. The Working Group also extends its thanks to the United Nations agencies in Madrid for their support for the visit. The Working Group would also like to express its appreciation to the civil society steering committee led by Movimiento por la Paz for coordinating meetings with civil society representatives in various parts of the country, and appreciates the feedback it received from everyone who shared their views on the human rights situation of people of African descent in the country.

II. Background: historical overview

6. The Spanish territory comprises nearly five sixths of the Iberian Peninsula and includes the Balearic and Canary Islands and the two autonomous cities of Ceuta and Melilla, the latter two of which are on the Mediterranean coast of Africa. Spanish identity especially has been forged on the frontlines of African and European interaction.[1] In the fifteenth century, slaves arrived in the peninsula through the slave markets of Barcelona,

[1] See Antumi Toasije, "The Africanity of Spain: identity and problematization", *Journal of Black Studies*, vol. 39, No. 3 (January 2009).

Valencia and the Balearics.[2] Historians who studied slavery in Spain thus concluded that Renaissance and perhaps even early-modern Spain might have had the largest African population in Europe.[3]

7. In 1518, the Government of Spain introduced a licence to supply the new colonies with slave labour. In the Spanish Caribbean, the rapidly declining population of Amerindians led Spanish colonists to look to Africa for labourers to manage the economic enterprises of plantations and mines long before the 1540s.[4] Overall, more enslaved Africans permanently entered the Spanish Americas than the whole British Caribbean, making Spanish America the most important political entity in the Americas after Brazil to receive enslaved Africans. It is believed that as many as 1.5 million enslaved Africans arrived in the Spanish Americas directly from Africa between 1520 and 1867 and further estimated that an additional 566,000 enslaved Africans were disembarked in Spanish America from other European colonies in the New World, such as Jamaica and Brazil.[5]

8. Among the more recent arrivals of people of African descent in Spain, the first group of migrants into Spain before the 1980s mostly came from Equatorial Guinea, an African territory occupied by Spain until 1968.[6] A second group, accounting for the majority of black Africans in Spain today, have arrived since the middle of the 1980s, the majority from West Africa (Senegal, Gambia, Cabo Verde and Mali), and since the 1990s, from Nigeria and Central Africa (Cameroon and the Democratic Republic of the Congo) and Equatorial Guinea.[7]

9. According to the National Statistics Institute, as at 1 July 2017, the population of Spain was estimated at 46,549,045, of which 4,464,997 were non-Spanish citizens. Staff of the Institute informed the Working Group that it did not solicit information based on ethnicity and race, but had information on nationality and country of birth. There being no official data on the population of people of African descent, various estimates reported by civil society were that the population of people of African descent could be anywhere between 1 and 2 million.

III. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

10. Spain has ratified all the major international human rights treaties, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

11. The protection of human rights and the prohibition of racial discrimination are enshrined in the Constitution. Article 14 of the Constitution states that "Spaniards shall be equal before the law, without discrimination of any kind based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance." Protection is also guaranteed under article 23 of the Organic Act No. 4/2000, which defines discrimination as any act that, directly or indirectly, involves any distinction, exclusion, restriction or

[2] See Tamar Herzog, "How did early-modern slaves in Spain disappear? The antecedents", *Republics of Letters: a Journal for the Study of Knowledge, Politics, and the Arts*, vol. 3, No. 1 (September 2012).

[3] See Aurelia Martin-Casares and Marga G. Barranco, "The musical legacy of black Africans in Spain: a review of our sources", *Anthropological Notebooks*, vol. 15, No. 2 (2009).

[4] See "African labourers for a new empire: Iberia, slavery, and the Atlantic world", online exhibition hosted by the Lowcountry Digital History Initiative, College of Charleston, South Carolina.

[5] See Alex Borucki, David Eltis and David Wheat, "Atlantic history and the slave trade to Spanish America: *American Historical Review*, vol. 120, No. 2 (April 2015). See also the Trans-Atlantic Slave Trade Database, Emory University, Atlanta, Georgia.

[6] See Antumi Toasije, "The Africanity of Spain: identity and problematization".

[7] Ibid.

preference directed against a foreigner on the basis of race, colour, descent, national or ethnic origin or religious beliefs and practices, and whose purpose or effect is to vitiate or curtail the recognition or equal exercise of human rights and fundamental freedoms in the political, economic, social and cultural spheres. Article 24 of the Act states that judicial protection against any discriminatory practice that violates fundamental rights and freedoms can be sought through the procedure provided for in article 53, paragraph 2, of the Constitution, as provided for by law. Article 54 of the Act, regarding very serious violations, stipulates that discriminatory behaviour on racial, ethnic, national or religious grounds, as set out in article 23, is a very serious violation, where it does not constitute an offence. A significant milestone in the legal framework is Act No. 62/2003 on taxes and administrative and social measures to effectively implement the principle of equal treatment and non-discrimination, particularly based on race or ethnicity, among other circumstances, both in the public and private sectors. Act No. 19/2007 has been approved to combat violence, racism, xenophobia and intolerance in sport and is aimed at preventing, controlling and penalizing any violent manifestation with racist, xenophobic or intolerant connotations in any sporting activity. The Government keeps a record of any infractions in that connection.[8]

12. Article 510.1 (a) of the Criminal Code penalizes public incitement to violence, hatred or discrimination. Racist insults, defamation and threats are punishable under the general norms on defamation, insults and threats in combination with article 22.4 of the Criminal Code on aggravating circumstances. In addition, article 170 of the Criminal Code provides for increased penalties if threats are intended to frighten members of a population, ethnic, cultural or religious group, or social or professional group or any other group of people. Article 607 of the Criminal Code criminalizes and constitutes an aggravating circumstance to commit an offence on the grounds of racism, anti-Semitism, religion or beliefs of the victim, or his/her ethnicity, citizenship, gender, sexual orientation or gender identity. The Criminal Code also provides for higher penalties if the act is committed via the Internet or if it is likely to disturb the public peace or create a serious sense of insecurity or fear among the members of a vulnerable group. The Working Group notes that there have been significant efforts made towards reviewing the existing laws and institutional measures. At the same time, the Working Group was informed that a 2011 bill on new anti-discrimination legislation had not been enacted.

B. Institutional and policy measures

13. The comprehensive strategy against racism, racial discrimination, xenophobia and other related intolerance (2011) and the framework protocol for the protection of victims of trafficking (2011) are important policy documents which provide the institutional framework for measures to combat racism, racial discrimination, xenophobia and related intolerance. The establishment of a number of institutions at the national, provincial and local levels including the Council for the Elimination of Racial or Ethnic Discrimination, specialized offices dealing with hate crimes and discrimination in all provincial prosecutorial offices in Spain, the Spanish Observatory on Racism and Xenophobia, are also important initiatives for combating racial discrimination. The Working Group welcomes in particular the establishment of hate crimes specialist units within all the offices of all provincial public prosecutors and the appointment of a special prosecutor to oversee the coordination of anti-discrimination activities at the national level. The Working Group, however, notes with concern that despite the earlier functioning of Council for the Elimination of Racial or Ethnic Discrimination, it does not have an infrastructure of its own and has ceased almost all its activities.[9]

14. The Working Group welcomes the initiatives being undertaken by the Observatory on Racism and Xenophobia, including training programmes for educators and school managers, health professionals and law enforcement officials, as well as initiatives to

[8] See www.interior.gob.es/web/archivos-y-documentacion/violencia-en-el-deporte2.

[9] See European Commission against Racism and Intolerance, report on Spain (fifth monitoring cycle, February 2018).

enhance interministerial cooperation on collecting information on hate crimes and combating hate speech. The Working Group also welcomes efforts to reach out to civil society, including through the provision of funding.

15. The Ombudsman is an independent national human rights institution. It is accredited under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) with "A" status. The Office of the Ombudsman monitors the activities of the administration and public authorities in the protection of human rights, reports annually to the parliament and may also submit case reports on matters that are considered particularly serious or urgent or require special attention. In November 2009, the parliament attributed the functions of the national preventive mechanism against torture to the Ombudsman and the Ombudsman therefore undertakes preventive visits to all detention centres in order to detect any torture or ill-treatment. The Working Group was informed of several reports by the Ombudsman recommending that the Government address issues of racism, racial discrimination, xenophobia and related intolerance. The Working Group welcomes in particular the work of the Ombudsman, which has shone a spotlight on racial profiling and recommended government actions.

16. Several initiatives are being undertaken at the national, regional (autonomous communities), provincial and municipal levels to combat racism, racial discrimination, xenophobia and related intolerance. Officials of the Ministry of Interior informed the Working Group that the Ministry had created the national office for the fight against hate crimes in January 2018 and a national register of incidents of hate. It had introduced measures to combat hate crimes in all its training curricula, set up a hotline and a website to report on any act of discrimination or perceived hate crime perpetrated by the state security forces and corps including the National Police and the Guardia Civil and carried out capacity-building activities on hate crimes for several thousand police officers.[10] It also reported on awareness-raising activities undertaken with civil society, social media campaigns and a directive plan to improve daily coexistence and security in schools. Between 2013 and 2016, the Ministry of Employment and Social Security had conducted a campaign against discrimination against migrant workers. The Working Group welcomes the adoption of a diversity coexistence plan in the province of Guipúzcoa, which integrates the principle of non-discrimination within regional policies, with a focus on discrimination based on the origin of persons or their ethnicity, while also taking into account cross-cutting issues such as gender equality or the needs of specific vulnerable groups, as well as multiple and intersectional forms of discrimination. The Working Group also welcomes the creation of a police unit focusing on diversity and hate crimes in Madrid. The diversity management unit of the municipal police of Madrid was created in 2016 and currently has 32 agents specialized in such issues. The Working Group also welcomes the revision of the code of ethics of the Catalan police (Mossos d'Esquadra), as well as the work of the Office of the Ombudsman and the Office of Non-Discrimination at the municipal level. The efforts being made to develop protocols to address racial discrimination in Barcelona are also encouraging. Despite the general lack of disaggregated data based on ethnicity or race, the Working Group did find in several instances that such data was available.

17. The Working Group noted the view of the Government that the availability of statistics on race or ethnicity would result in discrimination. Accordingly, statistics on aliens and immigration refer to nationality, but never to ethnic origin or religion, nor are such statistics compiled on Spanish nationals, although information gathered using research methods is available regarding the Spanish Gypsy population (see CERD/C/ESP/21-23, paras. 45–46). In some instances, the Working Group was provided with official data disaggregated on different grounds of discrimination (including ethnic, racial or national origin) but it did not find data specific to people of African descent as a distinct group.

18. While the authorities are aware of the International Decade for People of African Descent at the national level, a national plan of action to promote it has not been developed. At the provincial and municipal level, the Working Group found very little awareness of the

[10] See www.interior.gob.es/es/web/servicios-al-ciudadano/delitos-de-odio/denunciar-un-delito-de-odio.

International Decade. On the other hand, civil society in Spain is knowledgeable about it and stands ready to work with the Government to implement it. The Working Group also welcomes ongoing civil society initiatives to promote the International Decade in Spain.

IV. Manifestations of racial discrimination

A. Criminal justice system, representation, negative stereotypes and the media

Racial profiling

19. The Working Group found that racial profiling of people of African descent is endemic. Time and again, the Working Group heard how people of African descent are constantly assumed to be undocumented immigrants and thus disproportionately stopped in street checks in comparison to people of other ethnicities and in the absence of any security concerns. Being racially profiled is the lived reality of people of African descent. Civil society reported that black people run the risk of being singled out 42 times more often in ports and public transport, simply because of the colour of their skin. That widespread practice not only discriminates against foreigners and Spanish nationals from ethnic minority backgrounds, but also fuels racism, as those who witness such stops presume the victims to be engaged in criminal activities.

20. The national Ombudsperson and the Ombudsperson of Catalonia have also made recommendations to end racial profiling, in addition to the judgment of the Human Rights Committee in the case of *Rosalind Williams Lecraft v. Spain*.[11] The Working Group notes that the general principles of proportionality, equal treatment and non-discrimination in respect of identity checks have been included in the Law on the Security of Citizens. However, Spanish legislation still lacks a specific prohibition of racial profiling and the existing criteria for law enforcement agents to conduct identity checks remain insufficient. In fact, the Working Group received numerous testimonies attesting that identity checks based on racial profiling had continued since the Law on the Security of Citizens entered into force.

21. While appreciating that article 22.4 of the Penal Code establishes racial motivation as an aggravating circumstance, the Working Group is particularly concerned at the effects of the Law on the Security of Citizens on the rights of persons of African descent. The deterrent provisions of the Law that impose large fines for filming law enforcement agents and reversing the burden of proof, have reportedly pushed people into self-censorship, resulting in underreporting of discriminatory acts, failure to investigate and prosecute perpetrators and provide redress to victims.

22. Racial discrimination pervades all spheres in society from schools to the labour market; from housing to health and other social services. Representatives of civil society described a general lack of knowledge of the protection measures available for people of African descent. They also reported the difficulties affected people had in reporting incidents of discrimination owing to perceived mistrust and fear of the law enforcement authorities. They reported an increase in manifestations of racism, racial discrimination, xenophobia and related intolerance towards people of African descent associated with the economic crisis, increased migration and refugees, and antiterrorism measures. Civil society also reported that the lack of disaggregated data on the administration of justice meant that it was not possible to ascertain the number of cases processed for criminal offences with racial discrimination as an aggravating factor.

23. The Working Group welcomes the civil society initiative launched by organizations based in Madrid, Barcelona, Valencia, Almería and Murcia, on the occasion of the International Day for the Elimination of Racial Discrimination on 21 March, urging the

[11] See Committee on Human Rights, communication No. 1493/2006, paras. 7.2, 8 and 9.

Government to end police identification checks allegedly based on racial profiling. The call was made through a letter addressed to the Minister of the Interior.

Lack of representation

24. The Working Group found that lack of representation of people of African descent was endemic at State, regional and municipality levels, as well as in all three branches of power. The Working Group did not meet a single person of African descent in its extensive meetings with the authorities. The only exception was a meeting with the one member of the national parliament who is of African descent, which confirmed how marginal representation of people of African descent remains in the legislature. That is in sharp contrast to reports that persons of African descent in Spain represent up to 2 million people based on different estimates reported by civil society.

25. While the authorities explained that this was a result of the demographics of "recent migration from Africa" and the requirement to have Spanish citizenship to enter the civil service, the Working Group notes with concern that in the light of a substantial number of people of North African ancestry in Spain and the migration flux that has intensified since the 1990s, the underrepresentation may be attributed to racial bias and may perpetuate stereotypes of people of African descent as migrants and not as valuable contributors to Spanish society. In that connection, the lack of representation of people of African descent in the police is of particular concern, given widespread racial profiling, and represents a risk of exacerbated tensions between the police and communities.

Stereotyping

26. The authorities unanimously praised the exemplary integration of people of African descent and justified the lack of specific action "because there is no specific problem". The Working Group warns that such a position may result in an adverse effect and may lead to the invisibility of people of African descent and denial of an existing bias against them. Civil society reported several instances of racist portrayal of people of African descent in the media, particularly in the context of the influx of migrants, and in some advertisements in the mass media. Representatives of communities of African descent reported to the Working Group that lack of representation, coupled with an absence of positive references or role models in the media and in cultural activities lead to further invisibility.

27. The Working Group was told about Spanish festivities using the blackface. For representatives of civil society and people of African descent who met with the Working Group, such events were considered offensive and insulting and caricatured people of African descent in a dehumanizing way. In Catalonia and in Alcoy in Alicante province, the Working Group was told about the depiction of a black face in the Cabalgata de los Reyes Magos (Cavalcade of the Magi) and the depiction of giants with black faces built in wood in the city of Tarragona during the festival of Santa Tecla.

28. The Working Group collected numerous testimonies that women of African descent were being associated with sex workers, which lead to harassment and multiple forms of discrimination.

Migrants and asylum seekers

29. The Working Group recognizes the efforts made by Spain in relation to the migrant crisis and rescue operations at sea that have saved numerous lives. In particular, it welcomes the efforts of the new administration in rescuing more than 600 migrants and refugees of African descent aboard the *Aquarius* in Valencia on 17 June 2018.

30. However, the Working Group is concerned at the differing approach to asylum between the mainland and Ceuta and Melilla, which undermines the international protection of people of African descent. It is of particular concern that the asylum seekers are unable to reach the Spanish border because of the overzealous attitude of the Moroccan authorities. The authorities in Ceuta admitted that the Moroccan police do their work in such a manner that migrants do not reach the territory of Spain.

31. Sea arrivals to the Andalusian coast, many coming from sub-Saharan African countries, while usually being given access to the territory, are regularly detained under the irregular migration legal framework. There is no mechanism in place to identify their protection needs, refer them to the asylum channel, or prevent their detention. The practice of regularly detaining sea arrivals who state from the outset their intention to apply for protection, acts as a deterrent to claiming asylum and is in contradiction to the asylum legislation.

32. Spain is currently appealing the judgment of the European Court of Human Rights issued on 3 October 2017, in which Spain was accused of pushbacks or collective expulsions.[12] The Working Group notes the urgent need to modify the working criteria of the agents in charge of border control in Ceuta and Melilla, so that they can hand over to the national police those persons who try to gain access to Spanish territory to carry out the procedures established by immigration regulations and can inform interested parties about the possibility of requesting international protection.

Safeguards and conditions of detention

33. The Working Group notes that in accordance with article 62 bis 1 of Organic Law 2/2009, immigration detention centres do not have prison statu. However, the Working Group observed that the centres it visited functioned in practice as prisons.

34. While commending the State for reducing the maximum length of detention in immigration detention centres to 60 days, the Working Group notes with concern that immigration detention, which is a form of administrative detention (i.e. the individual has not committed a criminal offence), continues to be commonly used. The Working Group stresses that mandatory detention of groups of persons without an adequate assessment having been undertaken of the necessity and proportionality of detention in each individual case must be avoided.

35. Taking into account the well-documented suffering of people of African descent during their journey to Europe and pre-existing violations of their rights, any form of detention has a deleterious effect on the mental health of people of African descent, in particular in the case of minors and victims of trafficking, sexual gender-based violence or torture.

36. The Working Group found that migrants detained in the immigration detention centre in Aluche fell broadly into three categories: (a) individuals who had been convicted of a criminal offence, who had served a custodial sentence and were to be deported; (b) migrants in an irregular situation who had been identified during spot checks; (c) migrants in an irregular situation who had been rescued at sea and transferred to the centre for expulsion. As regards the first category of detainees, the Working Group was concerned to learn that during the day, individuals who had been sentenced to prison terms mixed with other categories of migrants.

37. Of serious concern to the Working Group is that the majority of women of African descent are trafficked for sex work in Spain and the rest of Europe. At the temporary migrant reception centre in Ceuta, the Working Group noted with concern that pregnant women and women with small children were facing difficulties in accessing basic needs. The Working Group was informed of the existence of micronetworks that are involved in human trafficking. Women who are expelled from European countries are most likely to be retrafficked to Europe. The Working Group is also seriously concerned about the large number of unaccompanied children of African descent who are subject to age assessment tests, which are not considered accurate, and which in most cases leaves them with gaps in their protection.

38. In terms of persons of African descent in prison, while statistics are not officially collected by the national statistical office, the Working Group was informed that about 25 per cent of all persons in prison in Spain were foreigners. However, the lack of specific data

[12] See European Court of Human Rights, *N.D. and N.T. v. Spain*, Applications Nos. 8675/15 and 8697/15, Judgment, 3 October 2017.

means that persons of African descent are invisible and are possibly discriminated against in the administration of justice.

Child migrants

39. On a positive note, the Working Group noted that children or families with children were not detained in immigration detention centres, although it received an allegation that in the Aluche centre children were being detained while their age was determined.

Hate crimes

40. The Working Group received numerous and corroborated testimonies of acts of violence motivated by hate and/or racism. According to NGO sources, the number of acts of aggression motivated by racism is estimated to be between 4,000 and 6,500 cases per year. Those unofficial figures confirm the broad perception of persons of African descent whom the Working Group interviewed that there is a vast gap between equality in law and in practice.

B. Disparities in access to education, health, housing and employment

41. The Working Group noted deficiencies in the enjoyment by people of African descent in Spain of their economic, social and cultural rights. It learned of the considerable challenges they face, such as a lack of job opportunities and inadequate access to quality health care, social security and secondary or tertiary education. According to joint research carried out by the European Union and the Ministry of Health, Social Services and Equality on discrimination, the Spanish population as a whole perceives inequalities to exist in access to public services (in 54 per cent of cases), in access to rented accommodation (75 per cent) and in recruitment to both non-managerial (78 per cent) and managerial (74 per cent) positions. It is essentially in the private field (housing rental, access to employment and access to non-managerial and managerial positions) that the greatest inequalities of opportunity are perceived to exist. Such discrimination, according to public opinion, is mainly on the grounds of ethnic or racial origin.[13] In the absence of disaggregated data, it is not possible to implement specific measures to address the deficit in the enjoyment by people of African descent of their economic, social and cultural rights.

42. Despite some coverage at the secondary and tertiary levels of education, the Working Group is concerned that the curriculum does not adequately reflect the history of colonization, or of the transatlantic trade in enslaved Africans, enslavement and the history and contributions of people of African descent in Spain. Civil society reported that although many schools were trying to address those issues through campaigns such as "cooperative learning", "value diversity" or "child-centred curriculum" that are inserted into existing materials, it is difficult for a teacher, new to a multicultural classroom to address issues of racism and racial discrimination effectively, or counter racial stereotypes, along with an adequate knowledge of the history of people of African descent. The Working Group was informed that in Catalonia there existed a "protocol of action against a serious conflict with students" which included hateful behaviour and discrimination based on ethnicity, race and/or national origin. However, civil society reported that it was rarely applied in schools owing to the lack of training of educational agents coupled with the systematic denial of racism.

43. The Working Group noted that the National Museum of Anthropology had hosted some exhibitions in relation to the history of people of African descent, which were supported by the General Subdirectorate for the Promotion of Fine Arts of the Ministry of Culture. At the same time, civil society reported a lack of programmes of cooperation and artistic creation focused specifically on the subject of people of African descent, as was currently being done with Latin American countries and subjects. The Working Group was also informed of de facto segregation in schools, with disproportionately higher dropout

[13] Ministry of Health, Social Services and Equality, "Mapping and profiling discrimination in Spain" (December 2014).

rates being seen in schools attended by children of African descent and other minority groups.

44. The Working Group was informed of the amendments introduced through Royal Decree-Law No. 16/2012 that curtails the right of undocumented migrants to gain access to public health services. In the wake of that decision, some autonomous communities have continued to provide universal access to health assistance. In June 2017, the Catalan parliament passed a law ensuring basic health assistance for all citizens in Catalonia, including undocumented migrants. Civil society reported that the Royal Decree-Law which revoked their previous full right to public health-care coverage had led to the deterioration of health management, including a situation of disinformation, neglect and confusion, not only in the general population, but in the health, administrative and social services. Further, civil society organizations had observed a deterioration in medical care, including disruption to the adequate follow-up of chronic and serious ailments, and the loss of effective prevention programmes. Women who did not have a health card and had become victims of gender-based violence and trafficking were particularly vulnerable, owing to the restrictions in the provision of health care and these included significant numbers of women of African descent. The Government reported that there were exceptions to this, in the case of undocumented migrants, with medical care available for pregnant women, victims of gender-based violence, minors under the age of 18, all victims of trafficking, people applying for international protection and for everyone in the case of a medical emergency.

45. Civil society reported that people of African descent were discriminated against in recruitment processes, sometimes very openly. They explained that even educated people of African descent did not have access to jobs at the same level as other Spanish nationals, even if they had similar educational qualification, because of the colour of their skin. The Working Group is concerned about the widespread exploitation of migrants, including people of African descent, who face racial discrimination and exploitation in the workplace. Employers of immigrants do not respect labour laws in terms of working conditions and payment of the minimum wage. Workers in the informal sector of the economy, such as street vendors, find themselves in a particularly vulnerable situation, with no social security or rights, and also experience harassment by law enforcement officials. Regardless of their levels of education, they do not have access to skilled jobs because of discrimination. Precarious contracts also make it impossible to apply for resident status.

46. The Working Group is seriously concerned about the plight of migrant workers who live in appalling conditions in Spain, particularly in Almería. Besides rampant wage exploitation, the Working Group heard accounts from migrant workers living in shacks made of old boxes and plastic sheeting, without sanitation or access to drinking water. The Working Group learned that migrants also faced structural racial discrimination in housing and social services where they lived, with limited access to water and electricity and infrequent garbage collection, which they also attributed to structural discrimination. Migrant workers also complained that they were periodically subjected to harassment, extortion and beatings at the hands of the Guardia Civil, allegedly in collusion with the employers.

C. Multiple forms of discrimination

47. The Working Group learned that people of African descent in Spain often faced inequalities and multiple forms of discrimination on the grounds of their race, colour, gender, sexual orientation and religious beliefs. Domestic workers, who are predominantly women, are invisible and subjected to long hours of work with no safeguards against abuse. Of particular concern to the Working Group were reports of children of African descent being taken away from their parents by social services.

48. Racial and gender stereotypes intersect and interact simultaneously to deny victims their basic rights to comprehensive protection and access to justice. Civil society reported that women of African descent in particular were subjected to racial stereotypes of being involved in prostitution and, as a result, faced separation from their families. The authorities allegedly consider that children of African descent are at risk because their

mothers are victims or presumed victims of trafficking. Instead of looking for solutions that protect the family unit from the violence of trafficking networks, they have instead sought to separate children from their parents, which undermines their right to family life.

V. Conclusions and recommendations

A. Conclusions

49. **The Working Group is concerned about the human rights situation of people of African descent in Spain, who experience racism and racial discrimination. There exist major gaps between law and practice in protecting people of African descent from racism, racial discrimination, xenophobia, Afrophobia and related intolerance. Joint research carried out by the European Union and the Ministry of Health, Social Services and Equality research indicated that the vast majority (82.4 per cent) of the people surveyed believed that "application of the law differs according to whom it is applied".**[14]

50. **Deeply ingrained in the official discourse is the belief that racial discrimination is mostly experienced by non-Spanish migrants and refugees of African descent, and that there is no structural and institutional racial discrimination against Spanish citizens of African descent. Civil society reported that people of African descent were invisible and the laws did not offer any protection from the racism they faced every day. Despite some important progress being made in terms of the review of the Criminal Code and institutional measures to combat hate crimes, some important deficits remain. The development of a global action plan, the strengthening of legislation and the enforcement of both could result in further advances in Spain in combating racism, racial discrimination, xenophobia, Afrophobia and related intolerance.**

51. **The Working Group notes with the utmost concern the absence of disaggregated data based on ethnicity or race. In reality, it leads to the invisibility of the community of persons of African descent and prevents racism, racial discrimination and social exclusion from being effectively addressed. Data disaggregated by ethnicity is vital in understanding the severity and scope of racial discrimination against people of African descent and in developing targeted and holistic responses.**

52. **The Working Group is concerned by the lack of representation of people of African descent at all State, regional and municipality levels, as well as in the judiciary and the legislatures. While the authorities explained that this was due to the demographics of recent migration from Africa and the requirement to be of Spanish citizenship, the Working Group is concerned that the underrepresentation may be attributed to racial bias and continue to perpetuate stereotypes of people of African descent as migrants and not as contributors to Spanish society. Lack of representation of people of African descent in the police force may tend to strengthen tensions between the police and communities. The Working Group found that people of African descent were also largely unrepresented in the media and education sectors, among others.**

53. **The Working Group recognizes the efforts made by Spain in relation to the migrant crisis and the rescue operations at sea that have saved numerous lives. At the same time, differing approaches to asylum between the mainland and Ceuta and Melilla undermine the international protection of people of African descent. Arrivals on the Andalusian coast, many coming from sub-Saharan African countries, while usually being given access to the territory of Spain, are regularly detained under an irregular migration legal framework. There is no mechanism in place to identify their protection needs, refer them to the asylum channel or prevent their detention. The**

[14] Ibid.

practice of regularly detaining arrivals by sea who state from the outset their intention to apply for protection, acts as a deterrent to claiming asylum and is in contradiction with the asylum legislation.

54. The Working Group notes with concern the collective expulsions and number of pushbacks at the borders of Spain in Ceuta and Melilla. It notes the ongoing appeal process, further to the judgment of the European Court of Human Rights issued on 3 October 2017, in which Spain was condemned for pushbacks or collective expulsions. The Working Group further notes the urgency to modify the working criteria of the agents in charge of border control in Ceuta and Melilla, so that they can hand over to the National Police those persons who try to access Spanish territory to carry out the procedures established by immigration regulations and can inform interested parties of the possibility of requesting international protection.

55. While commending the State for reducing the maximum length of detention in immigration detention centres to 60 days, the Working Group notes with concern that immigration detention, which is a form of administrative detention (i.e. the individual has not committed a criminal offence), continues to be commonly used. Taking into account the well-documented suffering of people of African descent during the journey to Europe and multiple violations of their rights, subsequent detention has a deleterious effect on the mental health of a person of African descent. On a positive note, the Working Group notes that children or families with children are not detained in immigration detention centres, although it received an allegation that in the Aluche detention centre children were being detained while their age was determined. Immigration detention of children is never in the best interests of a child and always constitutes a violation of the rights of the child.

56. The following recommendations are intended to assist Spain in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance.

B. Recommendations

57. The Government of Spain should consider adopting a comprehensive law against racism, racial discrimination, xenophobia and related intolerance, including measures aimed at preventing acts of racism. The Working Group notes that in February 2017 the Socialist Party submitted a proposal to the parliament for just such a comprehensive law. The Government should also consider adopting a comprehensive law against hate crimes, providing for comprehensive legal, psychological, social and economic assistance and adequate protection, information and restitution.

58. Legislative reforms affecting people of African descent should be undertaken in consultation with and the involvement of the civil society representing them.

59. The Working Group strongly recommends that the Government collect, compile, analyse, disseminate and publish reliable statistical data, disaggregated along ethnic lines on the basis of voluntary self-identification, and undertake all necessary measures to regularly assess the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance.

60. The Government should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

61. The Working Group urges the Government to comply with the recommendations made by the Office of the National Ombudsperson, including those relating to combating racism, racial discrimination, xenophobia and related intolerance.

62. On the subject of racial profiling, the Working Group recommends that the Government:

(a) Put in place a specific and independent complaints mechanism to address the issue;

(b) Implement the recommendations of the National Ombudsperson to end racial profiling and move towards a more nuanced official discourse on racial profiling;

(c) Conduct specialized training of police officers and public officials to prohibit and punish racial profiling;

(d) Carry out specific awareness campaigns to change the stereotypes of people of African descent.

63. **The Working Group recommends measures to increase the representation of people of African descent at all levels in the public administration (including in the Observatory on Racism and Xenophobia and specific entities already established to combat racist hate crimes), the judiciary, the prosecution services and law enforcement, and other sectors, including education and the media among others. Overcoming structural discrimination and unconscious bias will also require positive measures, in accordance with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.**

64. **The Working Group urges the Government to put an end to all forms of collective expulsions and pushbacks of asylum seekers and migrants. The Spanish authorities must respect the right of non-refoulement and the right of access to identification procedures. The summary returns should be carried out with a prior evaluation of the risk of return that allows access to the procedures for determining refugee status, since the pushbacks are contrary to the principle of non-refoulement.**

65. **The Government of Spain should facilitate the relevant procedures for identification and referral of persons in need of international protection at border posts, including their safe access to the territories of Ceuta and Melilla.**

66. **The Working Group recommends that the Spanish authorities adopt measures to shorten the delay in processing asylum requests. People of African descent should have access to procedural safeguards to challenge their detention and the Working Group recommends the introduction of alternatives to the detention of migrants and a scaling down of immigration detention facilities, which should be resorted to only when necessary and proportionate.**

67. **The Working Group recommends that the Aliens Law be reviewed, with a view to making it more respectful of the rights of asylum seekers and migrants. The overly long period of 10 years to qualify for citizenship could be shortened. Pathways to citizenship for migrants, including those in an irregular situation, should be created and strengthened.**

68. **The Government should introduce measures to include more people of African descent among officials at the centres of administrative detention for foreigners subject to deportation proceedings, administrative officials involved in refugee status determination and officials at ports, as well as all others involved in the expulsion process.**

69. **The State must develop a comprehensive human rights approach to dealing with the trafficking of people of African descent. Women who are victims of trafficking must be identified and accorded international protection in Spain. There is a need for specialized training of the border police, asylum officials and all civil servants, as well as interpreters, social workers, lawyers and the judicial authorities dealing with potential victims of trafficking.**

70. **The Government should as a matter of priority facilitate language and interpretation services in the immigration detention centres and temporary migrant reception centres corresponding to the language spoken by those arriving in Spain. Asylum seekers experience language difficulties that limit their understanding of their rights and the services offered to them by the Spanish authorities. Centres in Ceuta**

and Melilla should have the same standards in language and training courses as asylum seekers are entitled to and receive on the mainland.

71. **The Government should seriously consider eliminating all forms of detention for migrants and asylum seekers. Pathways to work permits, residency and citizenship should be created. Furthermore, Spain should shape its foreign relations with Morocco and other States towards an international consensus to end pushbacks of migrants and asylum seekers.**

72. **The Government should periodically review textbooks and other educational materials to ensure that they reflect historical facts accurately as they relate to past tragedies and atrocities, such as enslavement, the trade in enslaved Africans and colonialism. The Government should facilitate increased visibility for the history and culture of people of African descent through museums, monuments, visual arts and other means.**

73. **The Working Group recommends the establishment of a cultural institute for people of African descent in Spain, run by people of African descent. People of African descent would thus be able to develop programmes that would add to the richness of cultural diversity in the country. The Government is also encouraged to develop protocols for diversity studies, with role models of African descent at all levels.**

74. **The Government should take all necessary measures to ensure full implementation of the right to an adequate standard of living, including the right to adequate housing. Decent housing facilities, with associated utility services, should be provided to migrants in Almería.**

75. **The Government should address the racial discrimination and de facto segregation in the lack of social services for and exploitation in the labour market of people of African descent, including in Almería. The Government should ensure that there is no discrimination, that there is decent work for all workers and that domestic workers are not at risk of being exploited or abused. Informal work should also be looked into, with a view to solving the issue of street sellers, particularly in relation to minors.**

76. **People of African descent should have access to health care whenever necessary. The provision of universal health coverage and access to the public health system should be assured without any discrimination on any ground, including citizenship and ethnicity. The Government should ensure that health professionals are trained to handle cases of female genital mutilation, bearing in mind the right to privacy of patients. The Government should ensure that migrants and asylum seekers who cannot speak Spanish are assisted in the health-care system.**

77. **The amendments introduced through Royal Decree-Law No. 16/2012 that curtail the right of undocumented migrants to access to public health services as provided in several international human rights instruments ratified by Spain should be reviewed. The Government should ensure that detention centres provide adequate health care, including addressing trauma cases before expulsions.**

78. **In accordance with international human rights law, protection must be given to women of African descent who have been subjected to sexual and gender-based violence. The State must also put in place measures to encourage women to report incidents of sexual and gender-based violence.**

79. **The Working Group recommends that the Government support and facilitate an open debate with regard to the Spanish festivities using blackface and discussions with different groups, including people of African descent, should take place to identify steps that might respond to the views and concerns of all.**

80. **The Working Group reminds the media of their important role as a public watchdog with special responsibility for ensuring that factual and reliable information about people of African descent is reported.**

81. The Working Group urges the Government to involve civil society organizations representing people of African descent in framing important legislation concerning them and to provide those organizations with adequate funding.

82. Noting the international engagement of the Government with countries in the Latin American region, the Working Group encourages the Government to support the implementation of the International Decade for People of African Descent and the implementation of the 2030 Agenda for Sustainable Development within Spain, with a focus on the indicators that are relevant for people of African descent. The Working Group recommends a national discourse on reparatory justice to address past historical injustices. In partnership with civil society, the Spanish authorities should fully implement the programme of activities of the International Decade, along its three themes of recognition, justice and development for people of African descent. The International Decade presents an opportunity to showcase achievements in that regard.

83. The Working Group would like to reiterate its satisfaction at the willingness of the Government to engage in dialogue, cooperation and action to combat racial discrimination. It hopes that its report will support the Government in that process and expresses its willingness to assist in this important endeavour.